

# CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

## GENERAL PROVISIONS - COST-REIMBURSEMENT WITHOUT FEE WITH AN EDUCATIONAL INSTITUTION (COLLEGE OR UNIVERSITY) CONTRACT

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***GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL***

The attached Exhibits are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Exhibit A.

- Exhibit A. Certifications of Nonsegregated Facilities, Clean Air and Water, Anti-Kickback Compliance, Americans with Disabilities Act Compliance, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and Certification of Full Disclosure Regarding Debarred, Suspended, or Proposed for Debarment Status (Form JPL 2892)
- Exhibit B. Release of Information (Form JPL 1737)
- Exhibit C. Asbestos Notification (Form JPL 2895)
- Exhibit D. Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline (Form JPL 2385)
- Exhibit E. Management of Government Property in the Possession of Contractors (Form JPL 0968)
- Exhibit F. (RESERVED)
- Exhibit G. (RESERVED)
- Exhibit H. Vesting of Property Purchased with Contract Funds (Form JPL 2710)
- Exhibit I. Procurement Review Guidelines for Subcontracts Issued Under JPL Cost-Reimbursement Contracts (Form JPL 1939)
- Exhibit J. Correlation of JPL Passdown Requirements to Contractor's Proposed Subcontract Provisions (Form JPL 1942)

## **ARTICLE GP-1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
- (c) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (d) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
- (e) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (f) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (g) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (h) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
- (i) The term "NASA" means the National Aeronautics and Space Administration.
- (j) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (k) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (l) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (m) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (n) The terms "United States" or "U.S." mean the United States of America.

## **ARTICLE GP-2. ORDER OF PRECEDENCE**

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
  - (1) The Alterations Article.
  - (2) The GPs not altered.
  - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between

- (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
  - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,
- (c)(1) has order of precedence over (c)(2).

#### **ARTICLE GP-3. AUTHORITY OF JPL REPRESENTATIVES**

No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise, shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the Manager, Procurement Division, JPL, or by the Procurement Division Manager's authorized representative. Designations of authorized representatives shall be in writing, signed by the Manager, Procurement Division, and shall define the scope and limitations of the authorized representatives' authorities. A copy of each such designation, and of each modification or cancellation thereof, shall be furnished the Contractor. The Contractor shall immediately notify, in writing, the Manager of the Procurement Division or the Procurement Division Manager's authorized representative whenever a request, notice, authorization, direction or order has been received from a representative of JPL other than the Manager of the Procurement Division, or the Procurement Division Manager's authorized representative, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

#### **ARTICLE GP-4. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES**

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
  - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
  - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
  - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
  - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
  - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
  - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.

- (c) The Contractor agrees that it will delegate no part of the duties required of it by this Contract without the prior written consent of JPL; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts."

#### **ARTICLE GP-5. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS**

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

#### **ARTICLE GP-6. REQUIRED NOTICES**

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the Manager, Procurement Division, JPL, or the Procurement Division Manager's authorized representative.

#### **ARTICLE GP-7. RELEASE OF INFORMATION**

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")

#### **ARTICLE GP-8. BANKRUPTCY**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the JPL negotiator responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

#### **ARTICLE GP-9. (RESERVED)**

#### **ARTICLE GP-10. NOTICE TO JPL OF LABOR DISPUTES**

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
- (1) Identification of parts/materials, etc., which are or may be affected;
  - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower tier subcontractor, advise as to potential alternate sources;
  - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
  - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
  - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
  - (6) Manufacturer/Subcontractor and union data to include:

(A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;

(B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

(b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

#### **ARTICLE GP-11. ASBESTOS NOTIFICATION**

( This Article applies if any of the Contract effort will be performed in JPL-Pasadena or JPL-Edwards buildings.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Environmental Affairs and Chemical Controls Office for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena or JPL-Edwards buildings.

#### **ARTICLE GP-12. (RESERVED)**

#### **ARTICLE GP-13. (RESERVED)**

#### **ARTICLE GP-14. DRUG-FREE WORKPLACE REQUIREMENTS**

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

#### **ARTICLE GP-15. SAFETY: ILLNESS AND INJURY PREVENTION PROGRAM**

All Contractors whose personnel work at a site in California must establish and implement an effective illness and injury prevention program in compliance with California law.

#### **ARTICLE GP-16. ANTI-KICKBACK PROCEDURES**

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.

- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
  - (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
  - (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.
  - (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
- (1) Providing or attempting to provide or offering to provide any kickback;
  - (2) Soliciting, accepting, or attempting to accept any kickback; or
  - (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
- (c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the contract, the amount of any kickback. JPL may order that e monies withheld under subdivision (c)(3))(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3))(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

#### **ARTICLE GP-17. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(This Article applies if this Contract is expected to exceed \$100,000.)

(a) Definitions.

- (1) "Agency," as used in this Article, means executive agency as defined in 2.101.
- (2) "Covered Federal action," as used in this Article, means any of the following Federal actions:
  - (A) The awarding of any Federal contract.
  - (B) The making of any Federal grant.
  - (C) The making of any Federal loan.
  - (D) The entering into of any cooperative agreement.

- (E) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (3) "Indian tribe" and "tribal organization," as used in this Article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (4) "Influencing or attempting to influence," as used in this Article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- (5) "Local government," as used in this Article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of governmental duty, including a local public authority, special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (6) "Officer or employee of an agency," as used in this Article, includes the following individuals who are employed by an agency:
- (A) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (B) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (C) A special Government employee, as defined in section 202, title 18, United States Code.
- (D) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.
- (7) "Person," as used in this Article, means an individual corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (8) "Reasonable compensation," as used in this Article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- (9) "Reasonable payment," as used in this Article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- (10) "Recipient," as used in this Article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (11) "Regularly employed," as used in this Article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
- (12) "State," as used in this Article, means, a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory of possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.



(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; and the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:

(A) Agency and legislative liaison by own employees.

- (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this Article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- (ii) For purposes of paragraph (b)(3)(A)(i) of this Article, providing any information specifically requested by an agency or Congress is permitted at any time.
- (iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
  - a. Discussing with an agency the qualities and characteristics (including individual demonstrations) of any person's products or services, conditions or terms of sale, and service capabilities.
  - b. Technical discussions and other activities regarding the application to adaptation of the person's products or services for an agency's use.
- (iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -
  - a. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
  - b. Technical discussions regarding preparation of an unsolicited proposal prior to its official submission; and
  - c. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (v) Only those services expressly authorized by paragraph (b)(3)(A)(i) are permitted under this Section (b)(3)(A).

(B) Professional and technical services.

- (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this Article, does not apply in the case of :

- a. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
  - b. Any reasonable payment to a person other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (ii) For purposes of paragraph (b)(3)(B)(i) of this Article, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
  - (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
  - (iv) Only those services expressly authorized by paragraphs (b)(3)(B)(i)a. and b. of Section (b)(3)(B) are permitted under this Section.
  - (v) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard for LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this Article, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this Article. An event that materially affects the accuracy of the information reported includes -
  - (A) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

- (B) A change in the person(s) or individual(s) influencing or attempting or influence a covered Federal action; or
  - (C) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall submit and require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
  - (4) All contractor and subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the JPL negotiator for JPL, the prime Contractor. The Contractor shall submit all disclosures to the JPL negotiator (for provision to the Contracting Officer) at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (d) Agreement. The Contractor agrees not to make any payment prohibited by this Article.
  - (e) Penalties.
    - (1) Any person who makes an expenditure prohibited under paragraph (a) of this Article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this Article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
    - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
  - (f) Cost Allowability. Nothing in this Article makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this Article will not be made allowable under any other Article.

#### **ARTICLE GP-18. CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA**

(This Article is applicable if either the basic Contract or any modification exceeds \$500,000.)

- (a) Contractor Cost or Pricing Data. Whenever the price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$500,000, the Contractor agrees to furnish the Institute certified cost or pricing data, using the JPL certificate, form JPL 2496, or approved equivalent unless the Institute determines that the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or that the prices are set by law or regulation.
- (b) Subcontractor Cost or Pricing Data.
  - (1) Before awarding any subcontract expected to exceed \$500,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is:
    - (A) Based on adequate price competition;
    - (B) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
    - (C) Set by law or regulation.

- (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.
- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (4) In each subcontract that exceeds \$500,000 when entered into, the Contractor shall insert either:
  - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
  - (B) The substance of the clause at FAR 52.215-25, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
  - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
  - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:

- a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
  - b. The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
  - a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) Examination of Records. For purposes of verifying that certified cost or pricing data required to be submitted in conjunction with the negotiation of this Contract or change or modification thereto, or otherwise pursuant to the provisions of this Article, were accurate, complete, and current, the Contracting Officer of the Prime Contract, or authorized representatives, shall - until the expiration of three years from the date of final payment under this Contract or of the time periods specified in FAR subpart 4.7 and any corresponding implementing or supplementing provisions in the NFS, whichever expires earlier - have the right to examine those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein. The rights herein are in addition to those contained in any other provision of this Contract dealing with records, audit and records, and examination of records.
- (e) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

#### **ARTICLE GP-19. INTEGRITY OF UNIT PRICES**

(This Article is applicable if the initial Contract price exceeds the small purchase limitation in FAR Part 13, unless the Contract is for services where supplies are not required, construction or architect-engineer services, utility services, or petroleum products.)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) The requirement in paragraph (a) of this Article does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

- (c) The Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value, when requested by the JPL Negotiator. However, this information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.
- (d) The Contractor shall insert the substance of this Article, less paragraph (c), in all subcontracts.

#### **ARTICLE GP-20. AUDIT-NEGOTIATION**

- (a) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain - and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit - books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (b) Cost or Pricing Data. If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this Contract or any modification to this Contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the Contract or Modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.
- (c) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Article of this Contract. In addition:
  - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
  - (2) Records relating to appeals under the Disputes clause of the prime contract or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are disposed of.
- (e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, and any corresponding implementing or supplementing provisions in the NFS, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this Article affects neither the Contractor's obligations nor the Government's rights under this Article.
- (f) The Contractor shall insert all of the provisions of this Article, including this paragraph (f), in all subcontracts under this Contract which are over the small purchase limitation in FAR Part 13, altering the Article only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
- (g) If this Contract is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

#### **ARTICLE GP-21. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL**

- (a) This Article does not apply if this Contract does not exceed the FAR Part 13 small purchase limitation and does not apply if this Contract is for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until three years after final payment under this Contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, and any corresponding implementing or supplementing provisions in the NFS, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract.
- (c) The periods of access and examination in paragraph (b) above for records relating to (i) appeals under the "Disputes" Article of the Government prime contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, (ii) litigation or settlement of claims arising from the performance of this Contract, or (iii) costs and expenses of this Contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

#### **ARTICLE GP-22. PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE**

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval.

#### **ARTICLE GP-23. ELECTRICAL EQUIPMENT ACQUISITION**

(This Article is applicable if the Contract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Contractor under this Contract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Contractor at the Contractor's expense. The Contractor agrees to require subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

#### **ARTICLE GP-24. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

(This Article applies if any hazardous materials as defined in paragraph (a) below are to be delivered under this Contract.)

- (a) Hazardous material, as used in this Article includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the Contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this Article, to be delivered under this Contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this Contract. The following format will be used:

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

- (c) The apparently successful offeror, by acceptance of the Contract, certifies that the list submitted in accordance with paragraph (b) of this Article is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this Contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in accordance with paragraph (b) of this Article. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this Article or the certification submitted under paragraph (c) of this Article, the Contractor shall promptly notify the JPL Negotiator and resubmit the data.
- (f) Neither the requirements of this Article nor any act or failure to act by the Government or JPL shall relieve the Contractor of any responsibility or liability for the safety of JPL, Government, or other Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this Article shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's and JPL's rights in data furnished under this Contract with respect to hazardous material are as follows:
  - (1) To use, duplicate and disclose any data to which this Article is applicable. The purposes of this right are to:
    - (A) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (B) Obtain medical treatment for those affected by the material; and
    - (C) Have others use, duplicate, and disclose the data for the Government and JPL for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph (h)(1) of this Article, in precedence over any other of this Contract providing for rights in data.
  - (3) The Government and JPL are not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDSs), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this Article.
  - (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to mail MSDSs to consignees in advance of receipt of shipments by consignees, if authorized in writing by the cognizant JPL Negotiator..
  - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDSs in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.



## **ARTICLE GP-25. NOTICE OF RADIOACTIVE MATERIALS**

(This Article is applicable only if this Contract is for radioactive materials as defined in paragraph (a) of this provision.)

- (a) The Contractor shall notify the JPL Negotiator or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this Contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).
- (b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the JPL Negotiator or designee waive the notice requirement in paragraph (a) of this Article. Any such request shall:
  - (1) Be submitted in writing;
  - (2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
  - (3) Cite the contract number on which the prior notification was submitted .
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to JPL or the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the Contract.
- (d) This Article, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this Article.

## **ARTICLE GP-26. CLEAN AIR AND WATER**

(This Article does not apply to small purchases as defined in FAR Part 13 or to the use of facilities outside the United States. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

### **(a) Definitions.**

- (1) "Air Act," as used in this Article, means the Clean Air Act (42 U.S.C. 7401 et seq.).
- (2) "Clean air standards," as used in this Article, means:
  - (A) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
  - (B) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
  - (C) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411 (c) or (d)); or
  - (D) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412 (d)).

(3) "Clean water standards," as used in this Article, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(4) "Compliance," as used in this Article, means compliance with:

(A) Clean air or water standards; or

(B) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this Article, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

(6) "Water Act," as used in this Article, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees:

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract;

(2) That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(4) To include this Article into any nonexempt subcontract, including this paragraph (b)(4), if:

(A) The contract is expected to exceed \$100,000;

(B) The Contractor believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or

(C) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and

(D) The acquisition is not otherwise exempt under FAR 23.104 and any corresponding implementing or supplementing provisions in the NFS.

#### **ARTICLE GP-27. LIMITATION OF LIABILITY**

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this Contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this Contract) that (i) occurs after acceptance of the supplies delivered under this Contract and (ii) results from any defects or deficiencies in the supplies.

- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the Contractor's business;
  - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Contract, the Contractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute and the Government occurring after acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Contract.
- (d) The Contractor shall include this Article, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

**ARTICLE GP-28. CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES**

(This Article is applicable if the basic contract value is \$100,000 or more or as soon as any individual incremental value for a modification is \$100,000 or more.)

The Contractor understands that the work performed under this Contract may be in support of "Protected Space Operations" as defined in the three paragraphs (b)(5) under Part A, Part B, and Part C below, and therefore agrees to all three cross waiver provisions set forth below. The Contractor shall incorporate this Article into subcontracts which are for \$100,000 or more.

**PART A. CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES**

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Contractors" and "Subcontractors" include suppliers of any kind.
  - (2) "Damage" means:
    - (A) Bodily injury to, or other impairment of health of, or death of, any person;
    - (B) Damage to, loss of, or loss of use of any property;
    - (C) Loss of revenue or profits; or
    - (D) Other direct, indirect, or consequential damage;
  - (3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;
  - (4) "Payload" means any property to be flown or used on or in the Space Shuttle; and

- (5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this Contract. It includes, but is not limited to:
- (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;
  - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (NOTE: "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this Contract.)
- (6) "Related entity" means:
- (A) A party's contractors or subcontractors at any tier;
  - (B) A party's users or customers at any tier; or
  - (C) A contractor or subcontractor of a party's user or customer at any tier.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:
- (A) Any party other than the Government;
  - (B) A related entity of any party other than the Government; and
  - (C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
- (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);
  - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
  - (C) Claims for damage caused by willful misconduct; and
  - (D) Intellectual property claims.

- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

#### PART B. CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Contractors" and "Subcontractors" include suppliers of any kind.
  - (2) "Damage" means:
    - (A) Bodily injury to, or other impairment of health of, or death of, any person;
    - (B) Damage to, loss of, or loss of use of any property;
    - (C) Loss of revenue or profits; or
    - (D) Other direct, indirect, or consequential damage;
  - (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
  - (4) "Payload" means any property to be flown or used on or in the ELV; and
  - (5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving ELV Launch services or performed under this Contract. It includes, but is not limited to:
    - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the ELV, transfer vehicles, payloads, related support equipment, and facilities and services;
    - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(NOTE: "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this Contract.)
  - (6) "Related entity" means:
    - (A) A party's contractors or subcontractors at any tier;
    - (B) A party's users or customers at any tier; or
    - (C) A contractor or subcontractor of a party's user or customer at any tier.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

- (A) Any party other than the Government;
  - (B) A related entity of any party other than the Government; and
  - (C) The employees of any of the entities identified in (c)(1)(A) and (B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
  - (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
  - (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
    - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);
    - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
    - (C) Claims for damage caused by willful misconduct; and
    - (D) Intellectual property claims.
  - (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
  - (6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

#### PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

- (a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
  - (1) "Damage" means:
    - (A) Bodily injury to, or other impairment of health of, or death of, any person;
    - (B) Damage to, loss of, or loss of use of any property;
    - (C) Loss of revenue or profits; or
    - (D) Other direct, indirect, or consequential damage.
  - (2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

- (3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.
- (4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.
- (5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this Contract. It includes, but is not limited to:
- (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;
  - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (NOTE: "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this Contract.
- (6) "Related entity" means:
- (A) A Partner State's contractors or subcontracts at any tier;
  - (B) A Partner State's users or customers at any tier; or
  - (C) A contractor or subcontractor of a Partner State's user or customer at any tier.
- (7) "Contractors" and "Subcontractors" include suppliers of any kind.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:
- (A) Any Partner State other than the United States;
  - (B) A related entity of any Partner State other than the United States; and
  - (C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.

- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this cross- waiver of liability shall not be applicable to:
  - (A) Claims between any Partner State and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);
  - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
  - (C) Claims for damage cause by willful misconduct; and
  - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

#### **ARTICLE GP-29. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION**

(This provision is not applicable to contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15), including but not limited to contracts for supplies, materials, or articles ordinarily available in the open market, contracts, other than construction of \$2500 or less, construction contracts of \$2000 or less, contracts to be performed solely within a foreign country, and contracts for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics,)

- (a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics (see FAR 22.300 and any corresponding implementing or supplementing provisions in the NFS) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation, Liability for Unpaid Wages, and Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this Article, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this Article in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this Article.
- (c) Withholding for Unpaid Wages and Liquidated Damages. Either JPL or the Contracting Officer shall, upon their own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or any other contract with JPL, or any other Federally assisted contract which is subject to the Federal Contract Work Hours and Safety Act which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this Article.



(d) Payrolls and Basic Records.

- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of Contract work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
- (2) The records to be maintained under paragraph (d)(1) of this Article shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Institute, the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

- (e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this Article and also an Article requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this Article.

**ARTICLE GP-30. WALSH-HEALEY PUBLIC CONTRACTS ACT**

If this Contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**ARTICLE GP-31. EQUAL OPPORTUNITY**

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, contracts are exempt for work performed outside the United States by employees recruited outside the United States.)

If, during any 12-month period (including the 12 months preceding the award of this Contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (a) through (k) below during performing this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this Article.

- (d) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this Article and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish to NASA all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (h) The Contractor shall permit access to its books, records, and accounts by NASA or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
- (i) If the OFCCP determines that the Contractor is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (j) The Contractor shall include the terms and conditions of paragraphs (a) through (k) of this Article in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (k) The Contractor shall take such action with respect to any subcontract or purchase order as NASA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **ARTICLE GP-32. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**

(This Article is applicable if the amount of this Contract is in excess of, or is expected to exceed, \$2,500 unless the work is performed outside the United States by employees recruited outside the United States.)

##### **(a) General.**

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
  - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this Article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

**ARTICLE GP-33. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS**

(This Article is applicable if this Contract is for, or is expected to amount to, \$10,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

(a) Definitions.

- (1) "Appropriate office of the State employment service system," as used in this Article, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) "Openings that the Contractor proposes to fill from within its own organization," as used in this Article, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.
- (3) "Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this Article, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.
- (4) "Suitable employment openings," as used in this Article:
  - (A) Includes, but is not limited to, openings that occur in jobs categorized as (i) production and nonproduction, (ii) plant and office, (iii) laborers and mechanics, (iv) supervisory and nonsupervisory, (v) technical, and (vi) executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
  - (B) Includes full-time employment, temporary employment of over three days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer- union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing Openings.

- (1) The Contractor agrees to list all suitable employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this Contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this Article, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract Article.
- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

- (1) This Article does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) The terms of paragraph (c) above of this Article do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.
- (f) Noncompliance. If the Contractor does not comply with the requirements of this Article, appropriate actions may be taken under the rules, regulations and relevant orders of the Secretary issued pursuant to the Act.
- (g) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

#### **ARTICLE GP-34. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

(This Article is applicable if this Contract is for, or is expected to amount to, \$10,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

- (a) The Contractor shall report at least annually, as required by the Secretary of Labor, on:
  - (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and
  - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than March 31 of each year.
- (d) The employment activity report required by paragraph (a)(2) of this Article shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this Article. Contractors may select an ending date (i) as of the end of any pay period during the period January through March 1st of the year the report is due, or (ii) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this Article shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.
- (f) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

#### **ARTICLE GP-35. BUY AMERICAN ACT - SUPPLIES**

(This Article applies to supply contracts exceeding \$2,500 and to contracts for services which involve the furnishing of supplies when the supply portion of the contract exceeds \$2,500.)

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

(b) Definitions.

- (1) "Components," as used in this Article, means those articles, materials, and supplies incorporated directly into the end products.
- (2) "Domestic end product," as used in this Article, means (i) an unmanufactured end product mined or produced in the United States, or (ii) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (c)(2) or (3) of this Article shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above \$25,000 in value, components of Canadian origin are treated as domestic.
- (3) "End products," as used in this Article, means those articles, materials, and supplies to be acquired for public use under this Contract.

(c) The Contractor shall deliver only domestic end products except those:

- (1) For use outside the United States;
- (2) That the Contracting Officer determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (3) For which the Administrator determines that domestic preference would be inconsistent with the public interest; or
- (4) For which the Administrator determines the cost to be unreasonable (see section 25.105 of the FAR and any corresponding implementing or supplementing provisions in the NFS).

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR and any corresponding implementing or supplementing provisions in the NFS.)

**ARTICLE GP-36. PREFERENCE FOR U.S.-FLAG AIR CARRIERS**

(a) Definitions.

- (1) "International air transportation," as used in this Article, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- (2) "United States," as used in this Article, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
- (3) "U.S.-flag air carrier," as used in this Article, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this Contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.- flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [state reasons]:

*(end of certification)*

- (e) The Contractor shall include the substance of this Article, including this paragraph (e), in each subcontract or purchase order under this Contract that may involve international air transportation.

**ARTICLE GP-37. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS**

- (a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Contract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590. Contractor and subcontractor bills of lading shall be submitted through JPL.
- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) NASA shown as the sponsoring U.S. Government agency.
  - (B) Name of vessel.
  - (C) Vessel flag of registry.
  - (D) Date of loading.
  - (E) Port of loading.
  - (F) Port of final discharge.
  - (G) Description of commodity.
  - (H) Gross weight in pounds and cubic feet, if available.
  - (I) Total ocean freight revenue in U.S. dollars.
- (d) Except for purchases under the small purchase threshold in 48 CFR 13, the Contractor shall insert the substance of this Article in all purchase orders and subcontracts under this Contract.
- (e) The requirement in paragraph (a) does not apply to:
- (1) Small purchases as defined in 48 CFR 13;



- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
  - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC. 20590. Phone: 202-426-4610.

#### **ARTICLE GP-38. REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS**

- (a) This Article applies only if supplies furnished under this Contract contain jewel bearings or related items.
- (b) Definitions.
- (1) "Jewel bearing," as used in this Article, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes - olive, watch holes - straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.
  - (2) "Plant," as used in this Article, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (phone: 701-477-3193).
  - (3) "Price list," as used in this Article, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.
  - (4) "Related item," as used in this Article, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (i) is made from material produced by the Verneuil flame fusion process, (ii) has a geometric shape up to a maximum of one inch in any dimension, (iii) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (iv) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.
- (c) All jewel bearings and related items required for the supplies to be furnished under this Contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.
- (1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.
  - (2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.
  - (3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.
- (d) At its option, the Plant may decline or reject all or part of the Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify JPL promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, JPL shall evaluate the impact and make an equitable adjustment in the Contract amount, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.



- (e) The Contractor agrees to insert this Article, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

#### **ARTICLE GP-39. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

- (a) "Parastatal organization," as used in this Article, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of South Africa.
- (b) Unless advance written approval of JPL and the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this Contract:
  - (1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;
  - (2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;
  - (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or
  - (4) Supplies or services from the South African Government or parastatal organizations of South Africa.
- (c) The Contractor shall not acquire for use in the performance of this Contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- (d) The Contractor agrees to insert the provisions of this Article, including this paragraph (d), in all subcontracts hereunder.

#### **ARTICLE GP-40. GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM**

(This Article is applicable if the amount of this Contract is \$100,000 or more.)

- (a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.
- (b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis, consistent with efficient contract performance, and without impairment of program effectiveness or increase in program cost.
- (c) The Contractor further agrees to insert this Article in all subcontracts of \$100,000 and over.

#### **ARTICLE GP-41. REPORT ON SUBCONTRACTS**

(This Article is applicable if the amount of this Contract exceeds \$100,000.)

- (a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding \$25,000 within 10 working days after its execution:
  - (1) The name and address of the prime contractor and the NASA prime contract number.
  - (2) The name and address of the subcontractor.
  - (3) Whether the subcontractor is a large or small business concern and/or a minority business concern.

- (4) Whether the type of effort being performed involves research and development.
  - (5) A brief description of the subcontract work.
  - (6) The amount of the subcontract.
  - (7) The principal location where the subcontract work is to be performed, if known.
- (b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.
  - (c) "Subcontract," as used in this Article, means procurement in excess of \$25,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this Contract (including facility leases), except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this Contract.
  - (d) "Research and development," as used in this Article, means basic and applied research, and design and development of prototypes and processes, to (i) pursue a planned search for new knowledge, with or without reference to a specific application, (ii) apply existing knowledge in the creation of new products or processes, or (iii) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.
  - (e) The Contractor shall:
    - (1) Insert the provisions of paragraphs (a), (b), (c), and (d) of this Article in each subcontract over \$100,000;
    - (2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and
    - (3) Provide its subcontractors with the number of the NASA prime contract.

#### **ARTICLE GP-42. UTILIZATION OF LABOR SURPLUS AREA CONCERNS**

- (a) Applicability. This Article is applicable if this Contract exceeds the small purchase limitation in FAR part 13.
- (b) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSAs) when this can be done consistent with the efficient performance of the Contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.
- (c) Order of Preference. In complying with paragraph (b) above and with paragraph (c) of the Article of this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns", the Contractor shall observe the following order of preference in awarding subcontracts:
  - (1) Small business concerns that are LSA concerns;
  - (2) Other small business concerns; and
  - (3) Other LSA concerns.
- (d) Definitions.
  - (1) "Labor surplus area," as used in this Article, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment, or an area of labor surplus.

- (2) "Labor surplus area concern," as used in this Article, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the Contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50% of the Contract price.

#### **ARTICLE GP-43. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM**

(This Article is applicable if the amount of this Contract is in excess of, or is expected to exceed, \$500,000, unless the work including all subcontracts will be performed outside the United States.)

- (a) See the "Utilization of Labor Surplus Area Concerns" Article of this Contract for applicable definitions.
- (b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the Contract at prices no higher than obtainable elsewhere. The Contractor shall:
  - (1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" Article, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;
  - (2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;
  - (3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;
  - (4) Include the "Utilization of Labor Surplus Area Concerns" Article in subcontracts that offer substantial LSA subcontracting opportunities; and
  - (5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this Article. The records will be kept available for review by the Government until the expiration of one year after the award of this Contract, or for such longer period as may be required by any other Article of this Contract or by applicable law or regulations.
- (c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the "Utilization of Labor Surplus Area Concerns" Article, terms that conform substantially to the language of this Article, including this paragraph (c), and to notify JPL of the names of subcontractors.

#### **ARTICLE GP-44. USE OF RURAL AREA SMALL BUSINESSES**

- (a) Definitions.
  - (1) "Rural area" means any county with a population of fewer than twenty thousand individuals.
  - (2) "Small business concern," as used in this Article, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this Contract, and qualified as a small business under the criteria and size standards in 13 CFR part 121.
- (b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.
- (c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.
- (d) The Contractor agrees to insert the provisions of this Article, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

#### **ARTICLE GP-45. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

(This Article is applicable when the Contract amount is expected to be over the small purchase limitation in FAR Part 13, unless (i) a personal services contract is contemplated, or (ii) the Contract together with all its subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

- (a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or NASA as may be necessary to determine the extent of the Contractor's compliance with this Article.
- (c) As used in this Contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (i) which is at least 51% unconditionally owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (ii) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51% unconditionally owned by an economically disadvantaged Indian Tribe or Native Hawaiian Organization, or a publicly owned business having at least 51% of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian Tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Subcontinent Asian-Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.
- (e) It is understood and agreed that the failure of the Contractor to comply in good faith with this Article or with any plan required to be included in this Contract, shall be a material breach of this Contract.

#### **ARTICLE GP-46. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES**

(This Article is applicable when the Contract amount is expected to exceed the small purchase limitation in FAR Part 13, unless (i) the Contract is to be performed outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, or (ii) a personal services contract is contemplated.)

(a) **Definitions.**

- (1) "Women-owned small businesses," as used in this Article, means small business concerns that are at least 51% owned by women who are United States citizens and who also control and operate the business.
- (2) "Control," as used in this Article, means exercising the power to make policy decisions.
- (3) "Operate," as used in this Article, means being actively involved in the day-to-day management of the business.

- (4) "Small business concern," as used in this Article means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.
- (c) Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.
- (d) Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

#### **ARTICLE GP-47. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (SB/SDB PLAN)**

(This Article is applicable if the basic contract or any separate modification exceeds \$500,000 [\$1,000,000 for construction], except it does not apply to contracts with small businesses or orders under GSA contracts.)

- (a) If there will be any subcontracting under this Contract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction), the Contractor agrees to submit for JPL approval a Small Business and Small Disadvantaged Business Subcontracting Plan (Plan) and to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan," R 1/95. The approved Plan and approved updates will be deemed incorporated into this Contract.
- (b) If a Plan is required under this Contract, SF 295, "Summary Subcontract Report," and SF 294, "Subcontracting Report for Individual Contracts," are deliverables which must be submitted by the Contractor to the JPL Negotiator in accordance with the instructions on the forms except that:
  - (1) The Contractor shall submit the Summary Subcontract Report (SF 295) quarterly for the reporting periods specified in block 1.A. of the form. Reports are due 30 days after the close of each reporting period.
  - (2) The Contractor shall also complete Item 15 (Subcontract awards to Historically Black Colleges and Universities/Minority Institutions) in accordance with the existing instructions applicable to DOD activities.(All other provisions in the instructions paragraphs of the SF 295 remain in effect.)
- (c) It is understood and agreed that the failure of the Contractor to comply in good faith with the Article of this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or with any Plan required to be included in this Contract, shall be a material breach of this Contract.

#### **ARTICLE GP-48. RESTRICTIONS ON SUBCONTRACTOR SALES**

- (a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to JPL or the Government of any item or process (including computer software) made or furnished by the subcontractor under this Contract or under any follow-on production contract.
- (b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this Article, including this paragraph (c), in all subcontracts under this Contract.

## ARTICLE GP-49. PRINTING AND DUPLICATING

(This Article does not apply unless this Contract requires the Contractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) The Contractor shall reproduce any documentation required by this Contract in accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.
- (b) The term "printing," as used in this provision, is defined in the Government Printing and Binding Regulations and includes the processes of composition, plate making, presswork, binding, and the end items produced by such processes and equipment.
- (c) The Contractor is authorized to duplicate production units by offset plate making, copy-processing machines, or lithographs presses when negatives or metal plates are not required. The Contractor shall not exceed 5,000 production units of any one page or 25,000 units in the aggregated of multiple pages. Such plates may not exceed a maximum image size of 10- 3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 280 mm) one side only, and one color.
- (d) This Article does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this Contract; or administrative printing, for example, forms and instructional materials, necessary to be used by the Contractor
- (e) If the Contractor has reason to believe that any activity required under this Contract violates the regulations referred to in paragraph (a) of this Article, the Contractor shall provide the JPL Negotiator with immediate notice in writing and request approval prior to accomplishment of the activity.

Note 1: The terms "documentation" referred to in paragraph (a) and "production units" referred to in paragraph (c) of this Article, Printing and Duplicating, pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office even though the distribution of these reports and materials may be effectuated by the Contractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any contractor or a subcontractor such as JPL's or a contractor's Telephone Directory or JPL's or a contractor's internal newsletter, (ii) public information, education and public service documents, and award certificates printed for JPL or a contractor rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL or contractor or subcontractor representatives, where Government attendance is only incidental, and the Contract does not expressly require Government approval of the proceedings.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Contractor to the JPL negotiator for submission to the NASA Printing Management Officer through the Contracting Officer.



## **ARTICLE GP-50. RIGHTS IN TECHNICAL PROPOSAL DATA**

(This Article applies to contracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Contract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Contract and any future modifications are based.

## **ARTICLE GP-51. RIGHTS IN DATA - GENERAL**

(Except for paragraph (h), "Subcontracting," of this Article, which shall remain applicable, if the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Contract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

### **(a) Definitions.**

- (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, mask works, and computer software. The term does not include information incidental to Contract administration, such as financial, administrative, cost or pricing, or management information.
- (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4) "Institute" means the California Institute of Technology as a party to this Contract.
- (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. JPL's rights under this Contract are rights of the California Institute of Technology as a party to this Contract.
- (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government contract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.
- (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
- (8) "Mask work", as used in this clause, means a series of related images, however fixed or encoded (1) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.
- (9) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

- (10) "Restricted rights," as used in this Article, means the rights of the Government, and in support and in furtherance of its Government contract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Contract, including minor modifications of such computer software.
- (11) "Semiconductor chip product", as used in this clause, means the final or intermediate form of any product (i) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and (ii) intended to perform electronic circuitry functions.
- (12) "Technical data," as used in this Article, means data (other than computer software) which are of a scientific or technical nature.
- (13) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government contract obligations, the Institute, shall have unlimited rights in:
  - (A) Data first produced in the performance of this Contract;
  - (B) Form, fit, and function data delivered under this Contract;
  - (C) Data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and
  - (D) All other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
- (2) The Contractor shall have the right to:
  - (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in paragraph (d) of this Article;
  - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;
  - (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright or mask work notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and
  - (D) Establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided in subparagraph (c)(1) of this Article.

(c) Copyright and Mask Work:

- (1) Data First Produced in the Performance of This Contract.
  - (A) Unless provided otherwise in paragraph (d) of this Article, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer through JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this Contract.



When claim to copyright is made, the Contractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Prime Contract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under Contract NAS7-1260.") For data other than computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(B) If the Government desires to obtain Copyright in computer software first produced in the performance of this contract for which permission to copyright has not been granted to the Contractor as set forth in subdivision (c)(1)(A) of this Article, the Contracting Officer or the Institute may direct the Contractor to establish, or authorize the establishment of, claim to copyright in said computer software and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data Not First Produced in the Performance of This Contract. The Contractor shall not, without prior written permission of JPL, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains the copyright or mask work notice of 17 U.S.C. 401 or 402 or 909, unless the Contractor identifies such data and grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software the Contractor grants to the Government and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.

(3) Removal of Copyright and Mask Work Notices. JPL agrees not to remove any copyright or mask work notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this Contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this Contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.

(3) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this Contract without the Contracting Officer's prior written permission through JPL.

(e) Unauthorized Marking of Data.

(1) Notwithstanding any other provisions of this Contract concerning inspection or acceptance, if any data delivered under this Contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this Contract, JPL may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:

- (A) JPL shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
- (B) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
- (C) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the Contractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (3) This paragraph (e) does not apply if this Contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) (RESERVED)
- (f) Omitted or Incorrect Markings.
  - (1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government or JPL, the Contractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and JPL may agree to do so if the Contractor:
    - (A) Identifies the data to which the omitted notice is to be applied;
    - (B) Demonstrates that the omission of the notice was inadvertent;
    - (C) Establishes that the use of the proposed notice is authorized; and
    - (D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
  - (2) JPL may also:
    - (A) Permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

(1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this Contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to JPL under this Contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to JPL are to be treated as limited rights data and not restricted computer software.

(2) (RESERVED)

(3) (RESERVED)

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government and the Institute under this Contract. If a subcontractor refuses to accept terms affording the Government or the Institute such rights, the Contractor shall promptly bring such refusal to the attention of JPL and not proceed with subcontract award without further authorization.

(i) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.

(j) Inspection of Data Withheld. The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to subparagraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the first-tier subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

**ARTICLE GP-52. EXISTING COMMERCIAL COMPUTER SOFTWARE - LICENSING**

(This Article is applicable, with paragraph (h) of the Article entitled "Rights in Data - General," to the acquisition of any existing commercial computer software under this Contract.)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Vendor/Contractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Contract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Contract.

(b) Although the Vendor/Contractor might not propose its standard commercial software license until after this Purchase Order/Contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Vendor/Contractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Contract into which this Article is incorporated.

(c) The Vendor's/Contractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Contract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Vendor/Contractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

- (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Contract.
- (2) The commercial computer software may be:
  - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government contract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
  - (B) Reproduced for safekeeping (archives) or backup purposes;
  - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
  - (D) Disclosed and reproduced for use by Government or Institute contractors or their subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.
- (3) If the incorporated Vendor's/Contractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
- (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government contract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above.
- (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.

#### **ARTICLE GP-53. WARRANTY FOR COMMERCIAL COMPUTER SOFTWARE**

(This Article is applicable if commercial computer software is being purchased under this Contract.)

Contractor warrants that it has the right to sell, license, or transfer the license for the software furnished to customer under this Contract in accordance with the terms of this Contract.

#### **ARTICLE GP-54. TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS**

(This Article applies if the contract is in support of Space Station Freedom Program activities which may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (Subchapter M) in accordance with the "Space Station Level I Directive - Subject: Space Station Technology Transfer Control - dated March 21, 1989.")

- (a) In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.

- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.
- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

#### **ARTICLE GP-55. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

(This Article is applicable if the amount of this Contract exceeds \$25,000.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$25,000.

#### **ARTICLE GP-56. AUTHORIZATION AND CONSENT**

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$25,000); however, omission of this Article from any subcontract, under or over \$25,000, does not affect this authorization and consent.

#### **ARTICLE GP-57. NEW MATERIAL**

Unless this Contract specifies otherwise, the Contractor represents that the supplies and components are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in JPL's interest, the Contractor shall so notify JPL in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to JPL if JPL authorizes the use of used or reconditioned supplies or components.

**ARTICLE GP-58. (RESERVED)**

**ARTICLE GP-59. (RESERVED)**

**ARTICLE GP-60. (RESERVED)**

**ARTICLE GP-61. INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM)**

JPL and the Government have the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If JPL or the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

**ARTICLE GP-62. CHANGES**

- (a) JPL may by written Contract Unilateral Modification, at any time and without notice to the sureties, if any, issue written directions within the general scope of this Contract requiring additional work or directing the omission of or variation in work covered by this Contract.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the Modification, or otherwise affects any other terms and conditions of this Contract, an equitable adjustment shall be made in the (i) estimated cost, delivery or completion schedule, or both; and (ii) other affected terms, and the Contract shall be modified accordingly.
- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) (RESERVED)
- (e) Except as provided in paragraph (f) below, nothing contained in this Article shall excuse the Contractor from proceeding with the prosecution of the work as modified.
- (f) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this Contract is incrementally funded, the new amount allotted to the Contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds Article of this Contract.

**ARTICLE GP-63. SUBCONTRACTS**

- (a) The Contractor shall not, in the performance of this Contract, without the prior written consent of JPL, place any purchase order or subcontract which:
  - (1) Regardless of amount and which provides for the fabrication, purchase, rental, installation or other acquisition, of any facilities (as defined in FAR 45.301, and any corresponding implementing or supplementing provisions in the NFS, as in effect on the date of this Contract); or
  - (2) Is in excess of \$10,000 and which:
    - (A) Is for special tooling or special test equipment;
    - (B) Is on a cost-reimbursement basis; or
    - (C) Is on a time-and-material or labor-hour basis; or

(3) Is in excess of \$100,000.

JPL may in its discretion ratify in writing any subcontract or purchase order. Such action shall constitute the consent of JPL as required by the above.

(b) The Contractor shall also obtain the prior written consent of JPL for any purchase order or subcontract modification(s) identified in writing by JPL.

(c) To obtain consent, the Contractor shall submit documentation as follows:

(1) If the subcontract is for \$10,000 or less:

(A) The Contractor shall submit to JPL a letter requesting consent and, if applicable, DD form 1419, "DOD Industrial Plant Equipment Requisition."

(B) JPL consent is evidenced by:

(i) Issuance of a "JPL Consent to Subcontract" letter to the Contractor; or

(ii) JPL signature on the DD form 1419.

(2) If the subcontract exceeds \$10,000:

(A) The Contractor shall submit to JPL the documentation specified in form JPL 1939, "Procurement Review Guidelines for Subcontracts Issued Under Cost-Reimbursement Contracts," and, if applicable, DD form 1419, "DOD Industrial Plant Equipment Requisition."

(B) JPL consent is evidenced by issuance of a "JPL Consent to Subcontract" letter to the Contractor.

(d) Any subcontract or purchase order placed pursuant to (a) above in an amount exceeding 10% of the small purchase limitation defined in FAR Part 13 shall be awarded as a result of competition obtained by the Contractor, and the Contractor's file shall contain sufficient documentation to show the extent of the competition obtained or to justify its absence.

(e) JPL may in its discretion change any of the dollar limitations set forth in paragraph (a) of this Article upon reasonable notice to the Contractor.

(f) The Contractor agrees that no subcontract (including lower-tier subcontracts) placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of FAR and any corresponding implementing or supplementing provisions in the NFS, unless approved by JPL.

(g) The Contractor shall give JPL immediate notice in writing of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation related in any way to this Contract with respect to which the Contractor may be entitled to reimbursement from JPL.

(h) JPL may, in its discretion, specifically approve in writing any of the provisions of a purchase order or subcontract. However, such approval or the consent of JPL obtained as required by this Article shall not be construed to constitute a determination (i) of the acceptability of any subcontract terms and conditions; (ii) of the allowability of any cost under this Contract; or (iii) to relieve the Contractor of any responsibility for performing this Contract.

(i) (1) The Contractor shall insert in each price redetermination or incentive price revision subcontract hereunder the substance of the provision "Quarterly limitation on payments statement" of the FAR clause at 52.216-5, Price Redetermination - Prospective, 52.216-6, Price Redetermination - Retroactive, 52.216-16, Incentive Price Revision - Firm Target, or 52.216-17, Incentive Price Revision - Successive Targets, as appropriate, and any corresponding implementing or supplementing provisions in the NFS, and modified in accordance with the paragraph entitled "Subcontracts" of that clause.

- (2) Additionally, the Contractor shall include in each cost-reimbursement subcontract under this Contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

#### **ARTICLE GP-64. GOVERNMENT PROPERTY**

(a) Government-Furnished Property (hereafter "GFP").

- (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this Article, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (A) All or substantially all of the Contractor's business;
  - (B) All or substantially all of the Contractor's operation at any one plant, or separate location at which the Contract is being performed; or
  - (C) A separate and complete major industrial operation connected with performing this Contract.
- (2) JPL shall deliver to the Contractor, for use in connection with and under the terms of this Contract, the property, if any, which JPL has committed to provide in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property.
- (3) The delivery or performance dates for this Contract are based upon the expectation that GFP suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the Contract's delivery or performance dates.
- (4) If GFP is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify JPL, detailing the facts, and, as directed by JPL and at JPL expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, JPL shall make an equitable adjustment as provided in paragraph (h) of this Article.
- (5) If GFP is not delivered to the Contractor by the required time or times, JPL shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this Article.

(b) Changes in GFP.

- (1) JPL may, by written notice, (i) decrease the GFP provided or to be provided under this Contract or (ii) substitute other GFP for the property to be provided by JPL or to be acquired by the Contractor for JPL under this Contract. The Contractor shall promptly take such action as JPL may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- (2) Upon the Contractor's written request, JPL shall make an equitable adjustment to the Contract in accordance with paragraph (h) of this Article, if JPL has agreed in the Schedule to make such property available for performing this Contract and there is any:
  - (A) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
  - (B) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

- (1) The Government shall retain title to all GFP.



- (2) All GFP and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this Article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract and that, under the provisions of this Contract is to vest in the Government, shall pass to and vest in the Government upon the vendor's delivery of such property. Title to all other property, the cost of which is to be reimbursed to the Contractor under this Contract and that under the provisions of this Contract is to vest in the Government, shall pass to and vest in the Government upon:
- (A) Issuance of the property for use in Contract performance;
  - (B) Commencement of processing of the property or its use in Contract performance; or
  - (C) Reimbursement of the cost of the property by the Institute, whichever occurs first.
- (4) Title to equipment (and other tangible personal property) specifically approved by JPL in writing to be purchased with funds available for research and having an acquisition cost of \$5,000 or less shall vest in the Contractor, upon acquisition, provided JPL concurs in writing by issuance of the form specified below. Title to equipment purchased with funds available for research and having an acquisition cost in excess of \$5,000 shall vest with the Government, unless JPL (with NASA approval) indicates otherwise in writing by issuance of the form indicated below. If title to equipment vests in the Contractor under this subparagraph (c)(4), the Contractor agrees that no charge will be made to the Institute for any depreciation, amortization, or use under any existing or future JPL or Government contract or subcontract thereunder. In any case in which the equipment is a computer workstation consisting of a monitor and central processing unit, and for similar "systems" of equipment, "title" and the "acquisition cost" as used in this subparagraph shall be deemed to refer to the title and acquisition cost of the "system." The status of title to property and the required concurrences and approvals will be tracked using the form (JPL 2710) attached, which will be issued to the Contractor by the JPL Negotiator.
- (5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this Contract, the Contractor accepts and agrees to the following: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."
- (d) Use of Government Property. The Government property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by JPL.
- (e) Property Administration.
- (1) The Contractor shall be responsible and accountable for all Government property provided under this Contract and shall comply with the applicable provisions of FAR 45.5, and any corresponding implementing or supplementing provisions in the NFS, as modified by the JPL document "Management of Government Property in the Possession of Contractors" (JPL 0968), a copy of which is attached to and made a part of this Contract.
  - (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR 45.5 and any corresponding implementing or supplementing provisions in the NFS, as modified by JPL 0968.
  - (3) If damage occurs to Government property, the risk of which has been assumed by JPL under this Contract, JPL shall replace the items or the Contractor shall make such repairs as JPL directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by JPL. When any property for which JPL is responsible is replaced or repaired, JPL shall make an equitable adjustment in accordance with paragraph (h) of this Article.

- (f) Access. JPL or the Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited Risk of Loss.
- (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this Contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
  - (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this Contract (including expenses incidental to such loss, destruction, or damage):
    - (A) That results from a risk expressly required to be insured under this Contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
    - (B) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
    - (C) For which the Contractor is otherwise responsible under the express terms of this Contract;
    - (D) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
    - (E) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this Article.
  - (3)
    - (A) If the Contractor fails to act as provided by subparagraph (g)(2)(E) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
    - (B) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage:
      - (i) Did not result from the Contractor's failure to maintain an approved program or system; or
      - (ii) Occurred while an approved program or system was maintained by the Contractor.
  - (4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of JPL, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the Contract.
  - (5) Upon loss or destruction of, or damage to, Government property provided under this Contract, the Contractor shall so notify JPL and shall communicate with the loss and salvage organization, if any, designated by JPL. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to JPL a statement of:

- (A) The lost, destroyed, or damaged Government property;
  - (B) The time and origin of the loss, destruction, or damage;
  - (C) All known interests in commingled property of which the Government property is a part; and
  - (D) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as JPL directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by JPL, sell such property for the account of this Contract. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the Contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this Article. However, the Government may directly reimburse the loss and salvage organization for any of their charges. JPL shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.
- (7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Institute may have expressly required the Contractor to carry such insurance under another provision of this Contract.
- (8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Institute or the Government, as directed by JPL.
- (9) The Contractor shall do nothing to prejudice the Institute's or the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of JPL, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.
- (h) Equitable Adjustment. When this Article specifies an equitable adjustment, it shall be made to any affected Contract provision in accordance with the procedures of the "Changes" Article. When appropriate, JPL may initiate an equitable adjustment in favor of JPL. The right to an equitable adjustment shall be the Contractor's exclusive remedy. JPL shall not be liable to suit for breach of Contract for:
- (1) Any delay in delivery of GFP;
  - (2) Delivery of GFP in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of GFP; or
  - (4) Failure to repair or replace Government property for which JPL is responsible.
- (i) Final Accounting and Disposition of Government Property. Upon completing this Contract, or at such earlier dates as may be fixed by JPL, the Contractor shall submit, in a form acceptable to JPL, inventory schedules covering all items of Government property not consumed in performing this Contract or delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the cost of the work covered by this Contract or paid in such manner as directed by JPL. The foregoing provisions shall apply to scrap from Government property; provided, however, that JPL may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing

waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

- (j) Abandonment and Restoration of Contractor Premises. Unless otherwise provided herein, the Government through JPL:
  - (1) May abandon any Government property in place, at which time all obligations of the Government and of the Institute regarding such abandoned property shall cease; and
  - (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or Contract completion). However, if the GFP (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this Article may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this Article shall be in writing.
- (l) Overseas Contracts. If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (when they appear in this Article) shall be construed as "United States Government" and "United States Government-furnished," respectively.

#### **ARTICLE GP-65. ALLOWABLE COST AND PAYMENT (CREI)**

(a) Invoicing.

- (1) The Contractor shall submit an original and three copies of its commercial invoices monthly, unless otherwise provided in the Schedule of the Contract, to: Jet Propulsion Laboratory, Attention: Accounting Section, 4800 Oak Grove Drive, Pasadena, California 91109. The Government "Public Voucher" form of invoicing is not acceptable.
- (2) The Institute shall make payments to the Contractor once each month (or at more frequent intervals if approved by JPL) in amounts determined to be allowable by the Institute in accordance with Subpart 31.3 of the FAR and any corresponding implementing or supplementing provisions in the NFS and the terms of this Contract. The Contractor may submit, in such form and reasonable detail as JPL may require, an invoice supported by a statement of the claimed allowable cost for performing this Contract.

(b) Reimbursing Costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
  - (A) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract;
  - (B) When the Contractor is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for (i) materials issued from the Contractor's inventory and placed in the production process for use on the Contract; (ii) direct labor; (iii) direct travel; (iv) other direct in-house costs; and (v) properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts or subcontracts; and
  - (C) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

- (2) Contractor contributions to any pension or other post-retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.
- (3) Notwithstanding the audit and adjustment of invoices under paragraph (h) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (e) below.
- (4) Any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Institute shall be disregarded for purposes of cost-reimbursement under this Article.
- (c) Small Business Concerns. A small business concern may be paid for recorded costs for items or services purchased directly for the Contract, even though the concern has not yet paid for those items or services.
- (d) Promptly after receipt of each invoice the Institute shall, subject to the provisions of paragraph (h) below, make payment thereon as approved by JPL.
- (e) Final Indirect Cost Rates.
  - (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of FAR and any corresponding implementing or supplementing provisions in the NFS in effect for the period covered by the indirect cost rate proposal; provided, however, that the advance understandings, if any, on particular items of cost, as set forth in the Schedule of this Contract shall be given effect, provided further, however, that in the event of any inconsistency between such advance understandings and the cost principles referred to in (a) above, the cost principles shall prevail.
  - (2) A copy of the agreement between the Contractor and the Government for each of the periods applicable to this Contract, setting forth the indirect cost rates established in accordance with subparagraph (1) above, shall be furnished by the Contractor to JPL, and shall be deemed to be automatically incorporated into this Contract, subject to the proviso set forth in subparagraph (1) above.
- (f) Billing Rates. Until final annual indirect cost rates are established for any period, the Institute shall reimburse the Contractor at billing rates acceptable to JPL, subject to adjustment when the final rates are established. These billing rates:
  - (1) Shall be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (g) Quick-Closeout Procedures. When the Contractor and JPL agree, the quick-closeout procedures of Subpart 42.7 of the FAR and any corresponding implementing or supplementing provisions in the NFS may be used.
- (h) Audit. At any time or times before final payment, JPL may have the Contractor's invoices or statements of cost audited. Any payment may be (i) reduced by amounts found by JPL not to constitute allowable costs or (ii) adjusted for prior overpayments or underpayments.
- (i) Compliance Audit Reports. The Contractor shall deliver to JPL any required Compliance Audit Reports pursuant to OMB Circular A-133 (or A-128, if applicable) within 30 days of completion of the Report or receipt of the Report by the Contractor for any periods during which this Contract is being performed.

(j) Final Payment.

- (1) The Contractor shall submit a completion invoice, designated as such, promptly upon completion of the work, but no later than one year (or longer, as JPL may approve in writing) from the completion date. Upon approval of that invoice, and upon the Contractor's compliance with all terms of this Contract, the Institute shall promptly pay any balance of allowable costs.
- (2) The Contractor shall pay to the Institute any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Institute. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by JPL. Before final payment under this Contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
  - (A) An assignment to the Institute, in form and substance satisfactory to JPL, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Institute under this Contract; and
  - (B) A release discharging the Institute, its officers, agents and employees from all liabilities, obligations, and claims arising out of or under this Contract, except:
    - (i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
    - (ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this Contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to JPL within six years following the release date or notice of final payment date, whichever is earlier; and
    - (iii) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent provisions of this Contract, excluding, however, any expenses arising from the Contractor's indemnification of the Institute against patent liability.
    - (iv) When there is included in this Contract a provision entitled "Additional Data Requirements," claims pursuant to such provision when a written request by the Institute to furnish data is made.

**ARTICLE GP-66. INSURANCE - LIABILITY TO THIRD PERSONS**

- (a) Except as provided in subparagraph (1) immediately following, or in paragraph (h) of this Article if applicable, the Contractor shall procure and thereafter maintain the following insurance with respect to performance under this Contract:
  - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned and leased), completed operations, products, and Contractual Liability Insurance specifically covering all liability assumed under this Contract. Such insurance shall be written for a combined single limit of not less than \$1,000,000 for all deaths, injuries and property damage arising from one accident or occurrence.
  - (3) Such other insurance as JPL may from time to time require.

The Contractor agrees to furnish certificates of insurance to JPL for the coverage required hereunder, should JPL so request.

- (b) The Contractor agrees to submit for approval of JPL, to the extent and in the manner required by JPL, any other insurance that is maintained by the Contractor in connection with the performance of this Contract and for which the Contractor seeks reimbursement.
- (c) Except as provided in paragraph (h) of this Article if applicable, the Contractor shall be reimbursed:
  - (1) For that portion (i) of the reasonable cost of insurance allocable to this Contract and (ii) required or approved under this Article; and
  - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise. These liabilities must arise out of the performance of this Contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Institute. These liabilities are for (i) loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or (ii) death or bodily injury.
- (d) The Institute's liability under paragraph (c)(2) of this Article is subject to the availability of funds under the Prime Contract at the time a contingency occurs.
- (e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities):
  - (1) For which the Contractor is otherwise responsible under the express terms of any Article or Articles specified in the Schedule or elsewhere of the Contract;
  - (2) For which the Contractor has failed to insure or to maintain insurance as required; or
  - (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
    - (A) All or substantially all of the Contractor's business;
    - (B) All or substantially all of the Contractor's operations at any one plant or separate location in which this Contract is being performed; or
    - (C) A separate and complete major operation in connection with the performance of this Contract.
- (f) The provisions of paragraph (e) of this Article shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this Contract, other than insurance required in accordance with this Article; provided, that such cost is allowable under the "Allowable Cost and Payment" Article of this Contract.
- (g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this Contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall:
  - (1) Immediately notify JPL and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Institute or Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
  - (3) Authorize Institute or Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Institute, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Institute or the Government representatives in any such claim or litigation.

- (h) If the Contractor is partially immune from tort liability as a State Agency or as a charitable institution and notwithstanding paragraphs (a) and (e) of this Article:
- (1) The Institute does not assume any liability to third persons, nor will the Institute reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this Contract or any subcontract under this Contract.
  - (2) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of this Article; provided, that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by JPL as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraphs (c) and (d) of this Article, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this subparagraph (h)(2), but for which such coverage is insufficient in amount.

#### **ARTICLE GP-67. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (CREI)**

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees to insert this Article, including this paragraph (b), in all subcontracts and purchase orders hereunder.

#### **ARTICLE GP-68. ADDITIONAL DATA REQUIREMENTS**

- (a) In addition to the data (as defined in the "Rights in Data - General" Article or other equivalent included in this Contract) specified elsewhere in this Contract to be delivered, JPL may at any time during Contract performance or within a period of three years after acceptance of all items to be delivered under this Contract, order any data first produced or specifically used in the performance of this Contract.
- (b) The "Rights in Data - General" Article or other equivalent included in this Contract is applicable to all data ordered under this "Additional Data Requirements" Article. Nothing contained in this Article shall require the contractor to deliver any data the withholding of which is authorized by the "Rights in Data - General" Article or other equivalent Article of this Contract, or data which are specifically identified in this Contract as not subject to this Article.
- (c) When data are to be delivered under this Article, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The Contracting Officer through JPL may release the Contractor from the requirements of this Article for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

#### **ARTICLE GP-69. TERMINATION FOR CONVENIENCE**

- (a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part, if JPL determines that a termination is in the interest of the Institute or the Government. JPL shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination and except as directed by JPL, the Contractor shall immediately proceed with the following obligations:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this Article), except as necessary to complete the continued portion of the Contract.
  - (3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.



- (4) Assign to JPL, as directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this Article.
  - (6) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL any information and items that, if the Contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings and information.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by JPL, termination inventory other than that retained by JPL under subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Institute under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (c) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly but no later than six months from the effective date of termination unless extended in writing by JPL upon written request of the Contractor within this six-month period. If the Contractor fails to submit the termination settlement proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
  - (d) Subject to paragraph (c) above, the Contractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; provided, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The Contract shall be amended and the Contractor paid the agreed amount.
  - (e) The cost principles and procedures in Subpart 31.3 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," those cost principles in effect on the date of this Contract shall apply; provided, that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, for commercial organizations shall apply to such Contractor.
  - (f) The Institute may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this Contract, if the Institute believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

#### **ARTICLE GP-70. LIMITATION ON WITHHOLDING OF PAYMENTS**

If more than one Article of this Contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one Article at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any Article relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Contract; and
- (c) The recovery of overpayments.

#### **ARTICLE GP-71. DISPUTES**

- (a) Any dispute arising under or relating to this Contract which is not settled by agreement of the parties or pursuant to paragraph (b) below may be settled by appropriate legal proceedings. Pending any binding or conclusive decision, appeal or judgment referred to in this Article or the settlement of any such dispute, the Contractor shall proceed diligently with the performance of this Contract.
- (b) Notwithstanding any provisions herein to the contrary:
  - (1) If a decision on any question of fact arising under the Prime Contract is made by the Contracting Officer and such question of fact is also related to this Contract, said decision, if binding upon the Institute under the Prime Contract, shall in turn be binding upon the Institute and the Contractor with respect to such question insofar as it relates to this Contract; provided, however, that if the Contractor is adversely affected by any such decision made by the Contracting Officer, and if the Institute elects not to appeal such decision pursuant to the "Disputes" clause of the Prime Contract, the Institute shall notify the Contractor within 10 days after receipt by the Institute of a copy of the decision. Notification of the Contractor shall be deemed to have been made upon deposit by the Institute of a notice in the mail properly addressed to the Contractor or upon actual delivery of the Notice to Contractor by the Institute. The Contractor shall thereupon have the right reserved to the Institute under the Prime Contract to prosecute an appeal, in the name of the Institute, to the Administrator within 30 days after receipt by the Institute of a copy of the Contracting Officer's decision. Any decision upon appeal either by the Institute or by the Contractor in the Institute's name, if binding upon the Institute under the Prime Contract, shall in turn be binding upon the Contractor and the Institute with respect to such question of fact insofar as it relates to this Contract.
  - (2) If a decision is made by any representative of the Government on any question of fact and/or law arising under the Prime Contract which is also related to this Contract, from which an appeal under the "Disputes" clause in the Prime Contract is not available, said decision, if binding upon the Institute under the Prime Contract, shall in turn be binding upon the Contractor and the Institute with respect to such question insofar as it relates to this Contract; provided, however, that if the Contractor is adversely affected by any such decision, or if the Contractor is adversely affected by any decision upon an appeal referred to in paragraph (1) above, and if the Institute elects not to bring suit against the Government with respect to such decision, the Institute shall notify the Contractor with reasonable promptness. The Contractor shall thereupon have any right which the Institute would have to prosecute a suit against the Government in the Institute's name. Failure to exercise such right shall preclude the Contractor from objecting to the adverse conclusion or result under this Contract. A final judgment in any such suit shall be conclusive upon the Contractor and the Institute under this Contract.
  - (3) All costs and expenses of any such appeal or suit prosecuted by the Contractor shall be paid by the Contractor, without prejudice to any right the Contractor may otherwise have to recovery or allowance thereof.
  - (4) If as a result of any decision or judgment which is binding upon the Contractor and the Institute, as provided above, the Institute is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost for which the Institute has reimbursed the Contractor, the Contractor shall, on demand, promptly repay such amount to the Institute. Additionally, pending the final conclusion of any appeal and/or suit hereunder, the Institute may demand, and upon such demand the Contractor shall pay over to the Institute, any amount which the Government has disallowed or suspended under the Prime Contract and which arises out of this Contract.

## ARTICLE GP-72. PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM)

### (a) Definitions.

- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectible under Title 35 of the United States Code (U.S.C.) or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- (2) "Subject Invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
- (3) "Practical Application" means to manufacture in the case of a composition of product, to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Article, the size standard for small business concerns involved in Government procurement and subcontracting, at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- (6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (7) "Contracting Officer" has the meaning set forth under (c) of Article GP-1, "Definitions." The Contracting Officer has designated the Patent Counsel and the Technology Utilization Officer, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, California 91109, as the representatives for the administration of the "Patent Rights" Article of this Contract. All correspondence pertaining thereto shall be addressed to the Technology Utilization Officer unless transmitted in response to correspondence from the Patent Counsel. See (f) (5) (A) and (B) below regarding the requirement to send copies of transmittal letters to the JPL Office of Patents and New Technology and to the cognizant JPL negotiator.

- (b) Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Article and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

### (c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.

- (1) The Contractor will disclose each subject invention to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor will promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

- (2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to NASA. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Contracting Officer to a date that is no more than 60 days prior to the end of the statutory period.
  - (3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
  - (4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this Article, may, at the discretion of the Contracting Officer, be granted.
- (d) Conditions When the Government May Obtain Title. The Contractor will convey to NASA, upon written request, title to any subject invention:
- (1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) above, or elects not to retain title; provided that NASA may only request title within 60 days after learning of the Contractor's failure to disclose or elect within the specified times;
  - (2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this Article; provided, however, that if the Contractor has filed a patent application in a country after the time specified in paragraph (c) of this Article but prior to its receipt of the written request of the Contracting Officer, the Contractor shall continue to retain title in that country;
  - (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in re-examination or opposition proceeding on, a patent on a subject invention.
- (e) Minimum Rights to Contractor and Protection of the Contractor Right to File.
- (1) The Contractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this Article. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of NASA except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
  - (2) The Contractor's domestic license may be revoked or modified by NASA (the funding Federal agency) to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and NASA licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA (the funding Federal agency) to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
  - (3) Before revocation or modification of the license, NASA (the funding Federal agency) will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and NASA licensing regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest.

- (1) The Contractor agrees to execute or to have executed and promptly deliver to the Contracting Officer all instruments necessary to:
  - (A) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and
  - (B) Convey title to NASA when requested under paragraph (d) of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under Contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this Article, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this Article. The Contractor shall instruct such employees, through employee agreements or suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- (3) The Contractor will notify the Contracting Officer of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under NASA Prime Contract No. NAS7- 1260 and JPL subcontract no. [Note: Insert number of this JPL Contract] The Government has certain rights in the invention."
- (5) The Contractor shall provide the Contracting Officer (A) through (D) below. Copies of transmittal letters for (A) and (B) below shall be sent to the JPL Office of Patents and New Technology (OPANT) and to the cognizant JPL negotiator.
  - (A) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the Contract, of all subject inventions required to be disclosed during the period.
  - (B) A final report prior to closeout of the Contract listing all subject inventions or certifying that there were none.
  - (C) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Contractor has applied for patents.
  - (D) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) Subcontracts.

- (1) The Contractor will include this Article, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this Article, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (2) The Contractor shall include the clause in the NASA FAR Supplement at 18-52.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

- (3) In the case of subcontract, at any tier, NASA, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this Article constitute a contract between the subcontractor and NASA with respect to the matters covered by this Article; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this Article.
- (h) Reporting on Utilization of Subject Inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as NASA may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this Article. As required by 35 U.S.C. 202(c)(5), NASA agrees it will not disclose such information to persons outside of the Institute and the Government without permission of the Contractor.
- (i) Preference for United States Industry. Notwithstanding any other provision of this Article, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-in Rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of NASA to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:
- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
  - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
  - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
  - (4) Such action is necessary because the agreement required by paragraph (i) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special Provisions for Contracts with Nonprofit Organizations. If the Contractor is a nonprofit organization, it agrees that:
- (1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;
  - (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
  - (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

- (l) Communications. The NASA central point of contact for communications or matters relating to this Article is the Contracting Officer.

#### **ARTICLE GP-73. LIMITATION OF FUNDS**

(This Article shall be applicable and the Article of this Contract entitled "Limitation of Cost" inapplicable until such time as an amount equal to the total estimated cost and fee, if any, set forth in the Schedule is allotted to this Contract and thereafter the Article of this Contract entitled "Limitation of Cost" shall be applicable and this Article inapplicable, unless and until the amount allotted to this Contract once again becomes less than the total estimated cost and fee, if any, set forth in the Schedule.)

- (a) The parties estimate that performance of this Contract will not cost the Institute more than (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the Institute's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Institute's and the Contractor's share of the cost.
- (b) The Schedule specifies the amount presently available for payment by the Institute and allotted to this Contract, or the Institute's share of the cost if this is a cost-sharing contract. The parties contemplate that the Institute will allot additional funds incrementally to the Contract up to the full estimated cost to the Institute specified in the Schedule. The Contractor agrees to perform, or have performed, work on the Contract up to the point at which the total amount paid and payable by the Institute under the Contract approximates but does not exceed the total amount actually allotted by the Institute to the Contract.
- (c) The Contractor shall notify JPL in writing whenever it has reason to believe that the costs which it expects to incur in the performance of this Contract in the next succeeding 60 days, when added to (i) all costs previously incurred; (ii) the amount of termination costs that would be payable by the Institute in the event of termination of this Contract for the convenience of the Institute; and (iii) any fee paid or payable up through such period; will (i) exceed the total amount so far allotted to the Contract by the Institute, or (ii) if this is a cost-sharing contract, the amount then allotted to the Contract by the Institute plus the Contractor's corresponding share.
- (d) If, after notification, additional funds are not allotted in sufficient time to enable the Contractor to continue performance of this Contract in a timely manner, the Institute will, upon written request by the Contractor, terminate this Contract pursuant to the provisions of the "Termination for Convenience" Article.
- (e) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Article:
- (1) The Institute is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Institute to this Contract; and
- (2) The Contractor is not obligated to continue performance under this Contract (including actions under the "Termination for Convenience" Article of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the Contract by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted by the Institute to the Contract plus the Contractor's corresponding share, until JPL notifies the Contractor in writing that the amount allotted by the Institute has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Institute to this Contract.



- (f) The estimated cost shall be increased to the extent that (i) the amount allotted by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted by the Institute to the Contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- (g) No notice, communication, or representation in any form other than that specified in subparagraph (e)(2) above, or from any person other than a duly authorized representative of JPL, shall affect the amount allotted by the Institute to this Contract. In the absence of the specified notice, the Institute is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Institute to this Contract, whether incurred during the course of the Contract or as a result of termination.
- (h) When and to the extent that the amount allotted by the Institute to the Contract is increased, any costs the Contractor incurs before the increase that are in excess of (i) the amount previously allotted by the Institute, or (ii) if this is a cost sharing contract, the amount previously allotted by the Institute plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless JPL issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (i) Change orders shall not be considered an authorization to exceed the amount allotted by the Institute specified in the Schedule, unless they contain a statement increasing the amount allotted.
- (j) Nothing in this Article shall affect the right of JPL to terminate this Contract. If this Contract is terminated, JPL and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each.

#### **ARTICLE GP-74. LIMITATION OF COST**

- (a) The parties estimate that the total cost for performance of this Contract will not cost the Institute more than (i) the estimated cost specified in the Schedule, or, (ii) if this is a cost-sharing contract, the Institute's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Institute's and the Contractor's share of the cost.
- (b) The Contractor shall notify JPL in writing whenever it has reason to believe that:
  - (1) The costs the Contractor expects to incur under this Contract in the next 60 days, when added to all costs previously incurred, will exceed 75% of the estimated cost specified in the Schedule; or
  - (2) The total cost for the performance of this Contract will be either greater or substantially less than had been previously estimated.
- (c) As part of the notification, the Contractor shall provide JPL a revised estimate of the total cost of performing this Contract.
- (d) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Article:
  - (1) The Institute is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing Contract, the estimated cost to the Institute specified in the Schedule; and
  - (2) The Contractor is not obligated to continue performance under this Contract (including actions under the "Termination for Convenience" Article of this Contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until JPL (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this Contract. If this is a cost-sharing Contract, the increase shall be allocated in accordance with the formula specified in the Schedule.



- (e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than a duly authorized representative of JPL shall affect the estimated cost of this Contract. In the absence of the specified notice, the Institute is not obligated to reimburse the Contractor for any costs in excess of the estimated cost, or if this is a cost-sharing Contract, for any costs in excess of the estimated cost to the Institute specified in the Schedule, whether those excess costs were incurred during the course of the Contract or as a result of termination.
- (f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless JPL issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (g) Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this Contract shall not be considered an authorization to exceed the estimated cost specified in the Schedule, in the absence of a statement in a Unilateral Modification or other Contract Modification increasing the estimated cost.

#### **ARTICLE GP-75. (RESERVED)**

#### **ARTICLE GP-76. (RESERVED)**

#### **ARTICLE GP-77. (RESERVED)**

#### **ARTICLE GP-78. PURCHASING ADP EQUIPMENT**

In the event the Contractor contemplates purchasing Automated Data Processing (ADP) equipment for which title will vest in the Government, the Contractor shall submit the necessary data to enable JPL to prepare an adequate ADP Plan and shall not initiate any procurement action or acquire any ADP equipment without formal JPL approval.

#### **ARTICLE GP-79. TERMINATION OF DEFINED BENEFIT PENSION PLANS**

- (a) This Article is applicable if certified cost or pricing data is required and if any preaward or post-award cost determinations will be subject to FAR subpart 31.2 cost principles for commercial organizations.
- (b) The Contractor shall promptly notify the JPL Negotiator in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Institute for its equitable share reflecting the Institute's participation in pension costs through those contracts for which certified cost or pricing data were submitted or which are subject to subpart 31.2. The Contractor shall include the substance of this Article in all subcontracts under this Contract for which it is anticipated that certified cost or pricing data will be required and for which any preaward or post-award cost determinations will be subject to FAR subpart 31.2, cost principles for commercial organizations (i.e., which meet the applicability requirement of FAR 15.804-8(e)).

#### **ARTICLE GP-80. REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB)**

- (a) This Article is applicable if certified cost or pricing data is required and if any preaward or post-award cost determinations will be subject to FAR subpart 31.2 cost principles for commercial organizations.
- (b) The Contractor shall promptly notify the JPL Negotiator writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Institute for its equitable share as required by FAR 31.205-6(o)(5). The Contractor shall include the substance of this clause in all subcontracts under this Contract for which it is anticipated that certified cost or pricing data will be required and for which any preaward or post-award cost determinations will be subject to FAR subpart 31.2, cost principles for commercial organizations (i.e., which meet the applicability requirements of FAR 15.804-8(f)). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205-6(o).

#### **ARTICLE GP-81. PAYMENT FOR OVERTIME PREMIUMS**

- (a) Allowable cost shall not include any amount on account of overtime premiums, except to the extent that they either:
  - (1) Are approved in writing by JPL; or
  - (2) Are paid for work:
    - (A) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, break-downs of production equipment, or occasional production bottlenecks of a sporadic nature;
    - (B) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
    - (C) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
    - (D) That will result in lower overall costs to the Institute.
    - (E) For pre-launch activities and mission performance or delivery related events of an urgent nature.
- (b) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this Contract.
- (c) Any request for estimated overtime premiums submitted for approval pursuant to (a) (1) above shall include all estimated overtime for contract completion and shall:
  - (1) Identify the work unit, e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit JPL to evaluate the necessity for the overtime;
  - (2) Demonstrate the effect that denial of the request will have on contract delivery or performance schedule;
  - (3) Identify the extent to which approval of overtime would affect the performance or cost in connection with other JPL contracts, together with identification of each affected contract; and
  - (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

#### **ARTICLE GP-82. RIGHTS IN PROPERTY AND DATA ALLOCATION (COST-SHARE CONTRACTS)**

Whether or not this Contract provides for any cost sharing, rights in data and property are determined as though all costs of performance were to be reimbursed by the Institute.

**CERTIFICATIONS OF NONSEGREGATED FACILITIES, CLEAN AIR  
AND WATER, ANTI-KICKBACK COMPLIANCE, AMERICANS WITH  
DISABILITIES ACT COMPLIANCE, CERTIFICATION AND  
DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN  
FEDERAL TRANSACTIONS, AND CERTIFICATION OF FULL  
DISCLOSURE REGARDING DEBARRED, SUSPENDED,  
OR PROPOSED FOR DEBARMENT STATUS**

***(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)***

**CERTIFICATION OF NONSEGREGATED FACILITIES**

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
  - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
  - (2) Retain such certifications in its files; and
  - (3) Forward this certification and the following notice to the proposed subcontractors:

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
CERTIFICATION OF NONSEGREGATED FACILITIES**

**A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).**

- (d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

## **CERTIFICATION OF CLEAN AIR AND WATER**

By the submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies as follows:

- (a) No facility to be utilized in the performance of this proposed contract is listed on the Environmental Protection Agency "List of Violating Facilities;"
- (b) The offeror will promptly notify JPL, prior to award, of the receipt of any communication from the Administrator, or a designee, of the U.S. Environmental Protection Agency, indicating that any facility which the offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.
- (d) By commencing performance of the Contract work, the selected contractor certifies to the Clean Air and Water provisions above.

## **CERTIFICATION OF ANTI-KICKBACK COMPLIANCE**

A Certification of Anti-Kickback Compliance must be submitted prior to award.

### **CERTIFICATION OF ANTI-KICKBACK COMPLIANCE**

**By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.**

## **CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE**

The Contractor represents and certifies the following as part of its offer:

### **CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE**

**By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.**

**CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE  
CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions," are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
  - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR  
REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED,  
SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE  
U.S. FEDERAL GOVERNMENT AT TIME OF AWARD.**

(This certification applies to contracts with a contract value exceeding the small purchase limitation in FAR Part 13.)

- (a) By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

## **RELEASE OF INFORMATION**

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Public Information Office, mail stop 180-200, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

## **ASBESTOS NOTIFICATION**

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Environmental Affairs and Chemical Controls Office (EACCO) and Facilities Division, has had an on-going program of asbestos identification and control. This program has included air monitoring and training for members of the Facilities and Maintenance staff.

Most of the asbestos located at JPL/Pasadena and JPL/Edwards is in restricted access areas such as mechanical rooms, boiler rooms, and attics. It is in good condition and does not pose any hazard during normal operations.

Some of the buildings at JPL/Pasadena have extensive sprayed fireproofing above the ceilings. These buildings at the Oak Grove Site include: 167, 168, 169, 179, 180, 183, 186, 230, 238, 264, 291 and Foothill Buildings 502, 506 and 507.

The EACCO staff has taken numerous air samples in these buildings. Visual inspections and air samples indicate that airborne asbestos levels in the buildings are much lower than those in industrial workplaces where serious adverse health effects have been observed. Levels in the buildings are not significantly different from levels outside.

Asbestos-containing materials pose no threat to your health unless the fibers become airborne. Any contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers. Therefore, it is important not to disturb the asbestos materials.

General written procedures and handling restrictions necessary to prevent disturbance have been provided to JPL and contractor personnel. Only authorized and properly trained personnel are permitted to perform any work which may disturb asbestos materials. All contractor operations performed in areas where asbestos is present must be reviewed by EACCO prior to initiation of activities, and then tested and released by EACCO after completion of contractor activities but prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours at Building 125, Room 211. To make an appointment to review these documents, contact the Chemical Controls Group at ext. 4-1771.

If you have questions regarding operational procedures for contractor activities, contact EACCO at ext. 4-1771.

**NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S  
ETHICS POLICIES AND ANTI-KICKBACK HOT LINE**

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



## MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

- (a) Scope. This document prescribes the minimum requirements contractors must meet in establishing and maintaining control over Government property. It applies to contractors organized for profit and, except as otherwise noted, to nonprofit organizations. In order for the special requirements in this document governing nonprofit organizations to apply, the Contract must identify the Contractor as a nonprofit organization. If there is any inconsistency between this document and the terms of the Contract under which the Government property is provided, the terms of the Contract shall govern. JPL's Contractors are to respond to JPL as the prime contractor. All NASA directives do not necessarily apply to JPL. specifically, directives pertaining to the use of NEMS tags and the NASA Form 1018 reporting period.
- (b) Definitions.
- (1) "Accessory item," as used in this document, means an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.
  - (2) "Agency-peculiar property," as used in this document, means Government-owned personal property that is peculiar to the mission of NASA (e.g., space property). It excludes Government material, special test equipment, special tooling, and facilities.
  - (3) "Auxiliary item," as used in this document, means an item without which the basic unit of plant equipment cannot operate.
  - (4) "Centrally reportable equipment," as used in this document, means that plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) which is (i) generally commercially available and used as a separate item or component of a system, (ii) is valued at \$1,000 or more, and (iii) is identifiable by a manufacturer and model number.
  - (5) "Contractor-acquired property," as used in this document, means property acquired or otherwise provided by the Contractor for performing a contract with JPL and to which the Government has title.
  - (6) "Custodial records," as used in this document, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.
  - (7) "Discrepancies incident to shipment," as used in this document, means all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies included loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.
  - (8) "Facilities," as used in this document, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property. It does not include material, special test equipment, special tooling, or agency-peculiar property.
  - (9) "Government property," as used in this document, includes JPL-furnished, Government-owned property and contractor-acquired property.
  - (10) "Government-furnished property (GFP)," as used in this document, means JPL-furnished, Government-owned property in the possession of or directly acquired by the Government and subsequently made available by JPL to the Contractor.
  - (11) "Individual item record," as used in this document, means a separate card, form, document or specific line(s) of computer data used to account for one item of property.
  - (12) "Material", as used in this document, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

- (13) "Nonprofit organization," as used in this document, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, which is not organized for profit, and from which no part of the net earnings inures to the benefit of any private shareholder or individual.
- (14) "Plant equipment," as used in this document, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.
- (15) "Property Administrator," as used in this document, means an authorized representative of the Contracting Officer or an authorized representative of JPL assigned to administer the contract requirements and obligations relating to Government property.
- (16) "Real property," as used in this document, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.
- (17) "Salvage," as used in this document, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.
- (18) "Scrap," as used in this document, means personal property that has no value except for its basic material content.
- (19) "Space property," as used in this document, means personal property which is peculiar to aeronautical and space programs of NASA and is not otherwise included in the categories of property in FAR 45.501 and any corresponding supplementing provisions of the NASA FAR SUPPLEMENT (NFS). It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment. The term "space property" is synonymous with the term "agency-peculiar property," as defined in paragraph (a)(2) above.
- (20) "Special test equipment," as used in this document, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.
- (21) "Special tooling," as used in this document, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include consumable property, material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.
- (22) "Stock record," as used in this document, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.
- (23) "Utility distribution system," as used in this document, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.
- (24) "Work-in-process," as used in this document, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.
- (c) Contractor Responsibility.
- (1) The Contractor is directly responsible and accountable for all Government property in accordance with the provisions of this Contract. This includes Government property in the possession or control of a subcontractor. The Contractor shall establish and maintain a system in accordance with this document to control, protect, preserve, and maintain all Government property. This property control system shall be in

writing unless the Property Administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the property administrator.

- (2) The Contractor shall maintain and make available the records required by this document and account for all Government property until relieved of that responsibility. The Contractor shall furnish all necessary data to substantiate any request for relief from responsibility.
- (3) (A) The Contractor shall be responsible for the control of Government property hereunder upon:
  - (i) Delivery by JPL of GFP into its custody or control;
  - (ii) Delivery, when property is purchased by the Contractor and the Contract calls for reimbursement by JPL (this requirement does not alter or modify contractual requirements relating to passage of title).
  - (iii) Approval of its claim for reimbursement by JPL or upon issuance for use in Contract performance, whichever is earlier, of property withdrawn from Contractor-owned stores and charged directly to the Contract. This is not applicable to fixed-price contracts);
  - (iv) Acquisition by the Government of title to property pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract. For purposes of property control, such property shall, unless otherwise provided by the Contract, be considered Government property upon acceptance of title by JPL.
- (B) Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this document.
- (4) The Contractor shall require subcontractors that are provided Government property under this Contract to comply with the requirements of this document. Procedures for assuring subcontractor compliance shall be included in the Contractor's property control system.
- (5) If the property administrator finds any portion of the Contractor's property control system to be inadequate, the Contractor must take any necessary corrective action before the system can be approved. If the Contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the Contracting Officer.
- (6) The Contractor shall promptly report all Government property in excess of the amounts needed to complete full performance under this Contract.
- (7) When unrecorded Government property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.
- (d) Receipts for Government Property. Receipts for Government property shall comply with the instructions for preparation of NASA Form 1018, Report of Government-Owned/Contractor-Held Property (see NFS 18-45.7101).
- (e) Discrepancies Incident to Shipment.
  - (1) GFP. If overages, shortages, or damages are discovered upon receipt of GFP, the Contractor shall provide a statement of the condition and apparent causes to the property administrator and to JPL. Only that quantity of property actually received will be recorded on the official records.
  - (2) Contractor-acquired property. The Contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of Contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Government bill of lading and carrier liability is indicated, the Contractor shall report the discrepancy in accordance with paragraph (1) above.
- (f) The policy on the provision of Government property (both Government-furnished and contractor acquired) is prescribed in FAR 45.102 and NFS 18-45.102.
- (g) GFP. JPL will describe all GFP in the Contract Schedule or specifications, regardless of property category. Additional GFP must be described in a modification to the Contract. Furthermore, to obtain additional Government-furnished facilities, the Contractor must submit a written statement prescribed by FAR 45-302.1(a)(4) and any corresponding supplementing provisions of the NFS.
- (h) Contractor-Acquired Property. The acquisition (and fabrication) of Government property is subject to the following conditions, depending on category of property:

- (1) Centrally Reportable Equipment Not Otherwise Identified (unless for incorporation into flight qualified or flight monitoring deliverable end items).
  - (A) The Contractor shall provide JPL, at the earliest possible date, a detailed listing of requirements for screening of existing Government inventories. DD Form 1419, DOD Industrial Plant Equipment Requisition, will be prepared for each item of centrally reportable equipment to be acquired and forwarded to JPL for screening of the NASA Equipment Management System and other Government-available-equipment list for each item required, at least 30 days prior to beginning fabrication of or placement of a purchase order or subcontract for such equipment. In the event a certificate of non-availability is not received within such period, the Contractor may proceed to acquire the equipment or components, subject to any other applicable provisions of this Contract.
  - (B) Instructions for preparing the DD Form 1419 are contained in NFS 18-45.7103.
  - (C) See page 8(q)(1) DD Form 1342 (DOD Property Record) for reporting property acquisitions.
- (2) Facilities.
  - (A) Prior JPL approval, if not already described in a contract Schedule as Contractor acquired.
  - (B) Submission of DD Form 1419, "DOD Industrial Plant Requisition," and return of Certificate of Nonavailability if it qualifies as Centrally Reportable Equipment (CRE).
  - (C) Submission of a written statement prescribed by FAR 45.302-1(a)(4) and any corresponding supplementing provisions of the NFS.
- (3) Material. If a subcontracts clause is part of the Contract, advance notification to JPL and JPL consent as may be required by that clause.
- (4) Agency Peculiar.
  - (A) If a subcontracts clause is part of the Contract, advance notification to JPL and JPL consent as may be required by that clause.
  - (B) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.
- (5) Special tooling.
  - (A) If a "Subcontracts" clause is part of the Contract, advance notification to JPL and JPL consent as may be required by that clause.
  - (B) If a fixed-price contract, submission of the list to JPL within 60 days after delivery of the first production end items (or later as prescribed by JPL) unless already identified in the solicitation.
  - (C) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.
- (6) Special test equipment.
  - (A) JPL approval 30 days in advance if not identified in the Contract (on negotiated procurements).
  - (B) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.
- (i) Relief from Responsibility.
  - (1) Unless the Contract or JPL provides otherwise, the Contractor shall be relieved of property control responsibility for Government property by:
    - (A) Reasonable and proper consumption of property in the performance of the Contract as determined by the Property Administrator or JPL;
    - (B) Retention by the Contractor, with the approval of JPL and the Contracting Officer, of property for which the Government has received consideration;
    - (C) The authorized sale of property, provided the proceeds are credited to the Contract amount or paid in such a manner as JPL and the Contracting Officer may direct;
    - (D) Shipment from the Contractor's plant, under JPL's and the Government's instructions, except when shipment is to a subcontractor or other location of the Contractor; or

- (E) A determination by JPL and the Contracting Officer of the Contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, if:
  - (i) The determination is furnished to the Contractor in writing;
  - (ii) JPL is reimbursed where required by the determination; and
  - (iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.
- (2) Nonprofit organizations are relieved of responsibility for Government property when title to the property is transferred to the Contractor.
- (j) Contractor's Liability.
  - (1) Subject to the terms of the Contract and the circumstances surrounding the particular case, the Contractor may be liable for shortages, loss, damages, or destruction of Government property. The Contractor may also be liable when the use or consumption of Government property unreasonably exceeds the allowances provided for by the Contract, the bill of material, or other appropriate criteria.
  - (2) The Contractor shall report in writing all cases of loss, damage, or destruction of Government property in its possession or control to the property administrator and JPL as soon as such facts become known. A written report shall also be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the Contractor's possession or control.
  - (3) The Contractor shall require any of its subcontractors possessing or controlling Government property accountable under the Contract to investigate and report all instances of loss, damage, or destruction of such property.
- (k) Records and Reports of Government Property.
  - (1) The Contractor's property control records shall constitute the Government's and JPL's official property records unless an exception has been authorized. The Contractor shall establish and maintain adequate control records for all Government property, including property provided to and in the possession or control of a subcontractor. The property control records specified in this section are the minimum required by the Government and JPL. Unless the property administrator or JPL directs otherwise, when a subcontractor has an approved property control system for Government property provided under its own prime contracts, the Contractor shall use the records created and maintained under that system.
  - (2) The Contractor's property control system shall provide financial accounts for Government-owned property in the Contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.
  - (3) Official records must identify all Government property and provide a complete, current, auditable record of all transactions. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government and JPL personnel.
  - (4) Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required information.
  - (5) Special tooling and special test equipment fabricated from materials that are the property of the Government shall be recorded as Government-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the Contractor shall be recorded as Government property at the time title passes to the Government upon acceptance by JPL.
  - (6) Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Government property as a result of modification.
  - (7) The Contractor's property control system shall contain a system or technique to locate any item of Government property within a reasonable period of time.
- (l) Basic Information. Unless summary records are used as authorized under paragraph (p)(1) below, the Contractor's property control records shall provide the following basic information for every item of Government property in the Contractor's possession, regardless of value (other sections in this document require additional information for specific categories of Government property):

- (1) The name, description (model number, manufacturer, serial number), National Stock Number (if furnished by the Government or available in the property control system) and property identification number;
- (2) Acquisition date;
- (3) Quantity received (or fabricated), issued, and on hand;
- (4) Unit price (and unit of measure);
- (5) This Contract or Purchase Order number;
- (6) Location;
- (7) Disposition; and
- (8) Posting reference and date of transaction.

(m) Records of Pricing Information.

- (1) Requirement for unit prices.
  - (A) The Contractor's property control system shall contain the unit price for each item of Government property except as provided in (2) below. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the property records.
  - (B) (Note: This paragraph (B) does not apply to nonprofit organizations.) The requirement that unit prices be contained in the official property records does not apply to those separate property records located at a contractor's sites and subcontractor plants; provided, that:
    - (i) Records maintained by the contractor at its primary site include unit prices; and
    - (ii) The contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.
  - (C) When definite information as to unit price cannot be obtained, reasonable estimates will be used.
- (2) Determining unit price.
  - (A) Contractor-acquired and contractor-fabricated property. Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the Contractor in conformance with appropriately applied accounting principles as described in Section 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS. Generally, separate unit prices should be applied to items of special tooling and special test equipment fabricated or acquired by the Contractor. However, if the Contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the Contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the Contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.
  - (B) GFP. The Government or JPL shall determine and furnish to the Contractor the unit price of GFP. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the Contractor. In the event the unit price is not provided on the document covering shipment of the property to the Contractor, the Contractor will request it from JPL.

(n) Records of Material.

- (1) General. All Government material furnished to the Contractor, as well as other material to which title has passed to the Government by reason of allocation from Contractor-owned stores or purchase by the Contractor for direct charge to a JPL contract, shall be recorded in accordance with the Contractor's approved property control system and the requirements of this section.
- (2) Consolidated stock record. When a contractor has more than one JPL contract under which Government material is provided, a consolidated record for materials may be authorized by the property administrator,

provided, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

- (3) Custodial records. The Contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.
- (4) Use of receipt and issue documents. (Note: This paragraph (4) does not apply to nonprofit organizations.) The property administrator may authorize the Contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided material that is issued for immediate consumption and is not entered in the inventory as a matter of sound business practice. This method of control may be authorized for:
  - (A) Material charged through overhead, including but not limited to items used in manufacturing, maintenance, and office supplies;
  - (B) Material under research and development contracts;
  - (C) Subcontracted or outside production items;
  - (D) Nonstock or special items (these items are considered to be those whose procurement cycle is irregular and infrequent);
  - (E) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and
  - (F) Items issued from contractor-owned inventory direct to production or maintenance, etc.
- (5) Material issued directly upon receipt. (Note: This paragraph (5) applies only to nonprofit organizations.)
  - (A) Under fixed-price contracts, the Contractor's documents evidencing receipt and issue will be accepted as property control records for Government-furnished material issued directly by the Contractor upon receipt so as to be considered consumed under the Contract.
  - (B) Under cost-reimbursement contracts, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the Contractor and issued directly so as to be considered consumed under the Contract.
- (o) Records of Special Tooling and Special Test Equipment. (Note: The special tooling requirements of this section (o) do not apply to nonprofit organizations except for paragraph (3).)
  - (1) The Contractor's property control system shall provide the basic information listed in section (l) above regarding each item of Government-owned special tooling and special test equipment, including any general purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.
  - (2) If the Contractor uses group pricing of special tooling or special test equipment, as recognized in paragraph (m)(2) above, unit prices may be computed when required.
  - (3) In the case of special tooling acquired or fabricated by nonprofit organizations or furnished by JPL or the Government to nonprofit organizations for research and development, the Contract document will be accepted as adequate property control records.
  - (4) Records identifying special tooling and special test equipment shall include the identification number and item on which used.
  - (5) The Contractor shall, when specified by the Contract, identify and report special tooling and special test equipment by retention category (e.g., assembly tooling or critical tooling for spares or replacements).
- (p) Records of Plant Equipment.
  - (1) The Contractor shall maintain individual item records for each item of plant equipment having a unit cost of \$5,000 or more. Summary stock records may be maintained for plant equipment costing less than \$5,000 per unit, except when the Property Administrator or JPL determines that individual item records are necessary for effective control, calibration, or maintenance.

- (2) In addition to the information required in section (l) above, the Contractor's records of Government-owned plant equipment, regardless of value, shall include:
    - (A) Federal Supply Code for the manufacturer (as listed in Cataloging Handbook H4-1 and H4-2) (available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402);
    - (B) Federal Supply Classification (Cataloging Handbooks H2-1, H2-2, and H2-3) (available from GPO);
    - (C) The original manufacturer's model or part number.
  - (3) For each item of Government-owned plant equipment having a unit cost of \$5,000 or more, the Contractor shall, in addition to the requirements of (2) above, include:
    - (A) Serial number and year built (when available);
    - (B) Government identification/tag number; and
    - (C) Acquisition and disposition document references and dates.
  - (4) JPL may unilaterally determine that the information in paragraph (3)(A) and (B) above should be recorded in the property records for plant equipment costing less than \$5,000.
  - (5) Accessory and auxiliary equipment shall be recorded on the record of the associated item of plant equipment. If the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded either in an individual item record or in a summary stock record. When accessory and auxiliary items are permanently separated from the basic item of plant equipment, the unit price of the basic item shall be appropriately reduced.
- (q) Special Reports of Government Property (Reporting Centrally Reportable Equipment).
- (1) JPL requires that Contractor-acquired equipment as defined in (b)(4) above, "Centrally Reportable Equipment," be reported to JPL. A DD Form 1342, "DOD Property Record," shall be submitted (i) at the time of receipt and acceptance of accountability, and (ii) when major changes occur in the data initially submitted to JPL.
  - (2) The Contractor shall report excess Government property to JPL on Inventory Schedules (Standard Forms 1426-1434) when the property is no longer required for contract performance. (Reference paragraph (dd)(4)(A) of this form.)
  - (3) Each year the Contractor will be provided a verification listing of property accountable to the Contract.. At the direction of JPL, the Contractor shall verify the correctness of this listing or provide the necessary corrections.
- (r) Nonstandard Unique Equipment. For nonstandard unique equipment having a value of \$5,000 or more which is either fabricated by the Contractor or acquired from sources other than NASA or JPL, the Contractor shall provide the following information when such equipment becomes excess to the Contractor's needs:
- (1) Nomenclature;
  - (2) Contractor-assigned identification number;
  - (3) A brief functional description, include sketches, schematics, performance characteristics, operational manuals, etc., if available;
  - (4) List of major components having a unit value of \$5,000 or more; and
  - (5) Cost.
- (s) Records of Real Property.
- (1) The Contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Government real property (including unimproved real property); all alterations, all construction work, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall (i) be complete, (ii) show the original cost of the property and improvements and the cost of any changes and additions, and (iii) be appropriately indexed.



- (2) Costs incurred by the Contractor or JPL for new construction, including erection, installation, or assembly of real property in possession of the Contractor for JPL, shall be capitalized in the official Government real property records and financial accounts maintained by the Contractor for JPL.
  - (3) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value, life, utility, capability, or serviceability of Government real property shall be capitalized.
  - (4) Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the Government real property records or financial accounts.
  - (5) Costs incurred for maintenance, repair, or rearrangement to maintain the Government real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.
  - (6) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place, or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement, including pertinent facts.
- (t) Records of Scrap or Salvage.
- (1) The Contractor shall maintain records of all scrap or salvage generated, except as provided in section (bb) below. These records shall conform to the Contractor's established system of scrap and salvage control approved by the property administrator, who shall take into consideration the need for protecting the Government's and JPL's interest in the proration, disposition, and allocation of proceeds resulting therefrom.
  - (2) The Contractor's property control system shall provide the following information:
    - (A) Contract or purchase order number, if practical, from which the scrap or salvage derived;
    - (B) Nomenclature or description of salvable items or classification (material content) of scrap;
    - (C) Quantity on hand;
    - (D) Posting reference and date of transaction; and
    - (E) Disposition, including record of JPL authorization.
- (u) Records of Related Data and Information. The Contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information furnished to the Contractor by the Government or JPL or generated or acquired by the Contractor under the Contract and for which title vests in the Government. The requirements of this document do not otherwise apply to such property.
- (v) Records of Completed Products. The Contractor shall maintain a record of all completed products produced under a contract as follows:
- (1) When there is no time lapse between JPL inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by JPL and stored with the Contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.
  - (2) On contracts that provide for the Contractor to retain completed products for further use under the Contract or other contracts, such items shall be considered "GFP" upon acceptance and shall be recorded as required by this section.
  - (3) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to JPL, and other pertinent data necessary to determine that a proper accounting for all property has been made.
- (w) Records of Transportation and Installation Costs of Plant Equipment. (Note: This section (w) does not apply to nonprofit organizations.)
- (1) Transportation costs.

- (A) The Contractor shall record within the property control system the transportation and installation costs directly borne by JPL for each item of Government-owned plant equipment with an acquisition cost of \$5,000 or more. The Contracting Officer through JPL may require the Contractor to provide such recorded costs for use in computing rental charges.
- (B) If transportation costs are not included in the price of equipment delivered, the Contractor shall contact the property administrator or JPL for instructions for obtaining applicable freight data.

- (2) Installation costs.
  - (A) When the Contractor performs installation, the cost shall be computed in accordance with the Contractor's accounting system (if the system is acceptable for other Contract cost determination purposes) and recorded in the property record.
  - (B) When installation is subcontracted, the Contractor shall record the cost paid to the subcontractor in the property record.
  - (C) When installation costs are included in the price of equipment delivered to the using location, the property records should be so annotated.
- (x) Records of Misdirected Shipments. The Contractor's property control system shall provide the following information regarding each misdirected shipment of Government property received:
  - (1) Identity of shipment, such as shipping document or bill of lading;
  - (2) Origin of shipment;
  - (3) Content (items in the shipment) per shipping documents, if available;
  - (4) Location; and
  - (5) Disposition.
- (y) Records of Property Returned for Rework.
  - (1) The Contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to JPL. The Contractor shall establish item records under its property control system and shall include the information required in section (l) above.
  - (2) The records shall specify the quantity of units returned to JPL and the quantity otherwise disposed of with proper authority.
- (z) Reports of Government Property.
  - (1) Property accounts. The Contractor's property control system shall be such as to provide annually the total acquisition cost of Government property for which the Contractor is accountable in the following classifications in accordance with instructions in NFS 18-45.71:
    - (A) Land and rights therein;
    - (B) Buildings;
    - (C) Other structures and facilities;
    - (D) Leasehold improvements;
    - (E) Construction in progress;
    - (F) Equipment;
    - (G) Special test equipment;
    - (H) Special tooling;
    - (I) Agency peculiar;
    - (J) Material; and
    - (K) Contract work in process.
  - (2) Facilities, special tooling, equipment, and special test equipment. The Contractor's accounts covering items in paragraphs (1)(A) through (I) above will be susceptible to local reconciliation in totals and subtotals as to whether Contractor-acquired or Government-furnished.
  - (3) Agency-peculiar property. Includes actual or estimated costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress payments to fixed-price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.

- (4) Material and contract work in process. The Contractor's property control system shall be such as to provide the dollar value of items in paragraphs (1) (J) and (K) above for which it is accountable, regardless of value. Includes the costs of all work-in-process and excludes the costs of completed items reported in other categories.
- (5) Submission of reports. The Contractor shall submit a completed NASA Form 1018, "NASA Property in the Custody of Contractors," or equivalent, (or negative report) annually to JPL. Failure to submit the report when due (date to be determined by JPL) may be deemed noncompliance with contract requirements, and final payment may be withheld in accordance with the Article entitled "Allowable Cost and Payment."

(aa) Identification.

- (1) The Contractor shall identify, mark, and record all Government property promptly upon receipt, unless exempted by this section, and shall record assigned numbers on all applicable documents pertaining to the property control system. NASA NEMS tags shall be affixed to property as directed by JPL. Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.
- (2) All Government material and plant equipment having an acquisition cost less than \$5,000 shall be identified as Government property except in those cases where:
  - (A) No material or plant equipment of the same type costing less than \$5,000 at the same location is owned by the Contractor or its employees.
  - (B) Adequate physical control is maintained over protective clothing, tool crib, guard force, and other items issued to individuals for use in their work;
  - (C) Property is of bulk type, or its general nature of packing or handling precludes adequate marking; or
  - (D) Property is commingled, as authorized by section (bb) below.
- (3) In accordance with procedures approved by JPL, the Contractor shall mark Government-owned special tooling and special test equipment with a serial number and identification number and an indication of NASA ownership, including the recognition that JPL is responsible for funding and control of the property when appropriate. NASA NEMS tags shall be affixed to property as directed by JPL. If marking will damage the equipment or is otherwise impracticable, the Contractor shall promptly report the problem to the property administrator. The Contractor shall mark in a manner similar to plant equipment all components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.
- (4) The Contractor shall identify Government-owned plant equipment as such, unless (i) summary records are used as authorized under paragraph (p)(1) above, (ii) it is excluded under paragraph (aa)(2) above, or (iii) when the size or nature of the equipment makes identification impracticable. (Excepted items shall be entered and described on the equipment property record.) Property shall be identified by a legible, permanent, conspicuous, and tamper-proof method (e.g., decals, plates, stamping, etc.). Identification shall consist of a serial number and an indication of NASA ownership (unless already properly identified as NASA property). NASA NEMS tags shall be affixed to property as directed by JPL.
- (5) Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the property records need not be marked with an identification number, unless necessary to assure its return with the associated basic item.

(bb) Segregation of Government Property. Government property shall be kept physically separate from Contractor-owned property. However, when advantageous to the Government or JPL and consistent with the Contractor's authority to use such property, the property may be commingled:

- (1) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;
- (2) When approved by the property administrator in connection with research and development contracts;
- (3) When (i) scrap of a uniform nature is produced from both Government-owned and Contractor-owned material and physical segregation is impracticable, (ii) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (iii) Government contracts involved are fixed-price and provide for the retention of the scrap by the Contractor; or
- (4) When otherwise approved by the property administrator.

(cc) Physical Inventories. The Contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the Contract) in its possession or control and shall cause subcontractors to do likewise. Physical inventories consist of sighting, tagging or marking, describing, recording, reporting, and reconciling the property with the records. The Contractor, with the approval of JPL, shall establish the type, frequency, and procedures. Type and frequency of inventory should be based on the Contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the Contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the Contractor, but may vary with the types of property being controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the Contractor's operation is too small to do otherwise. JPL contractors shall complete reconciliations of inventories described in this section (cc) with the official property records and shall submit reports to the property administrator within 30 days after the completion of an inventory. All instances of loss of property and discovery of unrecorded property shall be investigated by the Contractor to determine (i) the cause of the discrepancy and (ii) actions needed to prevent recurrence of the discrepancy. It may be determined by the property administrator that JPL will perform the physical inventory.

(dd) Inventories upon Termination or Completion.

- (1) General. Immediately upon termination or completion of a contract, the Contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (2) below.
- (2) Exception. The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; provided, that:
  - (A) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and
  - (B) The Contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the Contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.
- (3) Listings for disposal purposes. (Note: This paragraph (3) applies only to nonprofit organizations.)
  - (A) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.
  - (B) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.
- (4) Preparation of inventory schedule.
  - (A) Subsequent to termination or completion of this Contract, or determination that property is no longer required for contract performance, the Contractor shall prepare and submit to JPL appropriate inventory schedules as specified in FAR 45.606 and any corresponding supplementing provisions of the NFS (except that in FAR 45.606 the term "plant clearance officer" shall be deemed to mean "property administrator") which reflect all remaining property purchased, fabricated, or constructed with Contract funds and/or property supplied to the Contractor by JPL for the performance of this Contract. The schedules will reflect an appropriate nomenclature, description, quantity, acquisition cost, FSC (Federal Supply Classification), and condition code for each item of property.
  - (B) Inventory schedules shall be signed by an authorized representative of the Contractor, prior to submittal to JPL for disposal action.
  - (C) When no Government property has been furnished to or acquired by the Contractor under this contract, inventory schedules will not be required; instead, a properly completed Property Close-out Certificate, form JPL 0948 (see Exhibit 1), shall be submitted.
- (5) Disposition of residual property.

- (A) Upon submittal of four executed copies of the appropriate inventory schedules to JPL, screening and disposal action will be initiated. Additional copies of the appropriate inventory schedules shall be furnished upon request.
- (B) Disposition of residual property shall be made in accordance with specific instructions furnished by the Plant Clearance Officer or the JPL Property Administrator.
- (6) A Property Close-out Certificate, JPL form 0948, or equivalent shall be completed, signed by the Contractor's authorized representative and returned to JPL prior to final payment being effected.
- (ee) Reporting Results of Inventories. The Contractor shall, as a minimum, submit the following to JPL promptly after completing the physical inventory:
  - (1) A listing that identifies all discrepancies disclosed by a physical inventory;
  - (2) A signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.
- (ff) Quantitative and Monetary Control. When requested by JPL, the Contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.
- (gg) Care, Maintenance, and Use. The Contractor shall be responsible for the proper care, maintenance, and use of Government property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the Contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the Contractor of these responsibilities.
- (hh) Contractor's Maintenance Program.
  - (1) Consistent with the terms of the Contract, the Contractor's maintenance program shall provide for:
    - (A) Disclosure of need for and the performance of preventive maintenance;
    - (B) Disclosure and reporting of need for capital rehabilitation; and
    - (C) Recording of work accomplished under the program.
  - (2) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least:
    - (A) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;
    - (B) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;
    - (C) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;
    - (D) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;
    - (E) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;
    - (F) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and
    - (G) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.
  - (3) The Contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.
- (ii) Use of Government Property. The Contractor's procedures shall be in writing and adequate to assure that Government property will be used only for those purposes authorized in the Contract.
- (jj) Property in Possession of Subcontractors. The Contractor shall require any of its subcontractors possessing or controlling Government property to adequately care for and maintain that property and assure that it is used

only as authorized by the Contract. The Contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.

- (kk) Shipment of Government Property. Copies of DD Form 1149 or comparable documents shall be forwarded to the JPL Property Administrator upon shipment.
- (ll) Audit of Property Control System. The Contractor's Government property control system may be audited by the Government or JPL as frequently as conditions warrant. These audits may take place at any time during Contract performance, upon Contract completion or termination, or at any time thereafter during the period the Contractor is required to retain such records. The Contractor shall make all such records and related correspondence available to the auditors.



**Jet Propulsion Laboratory**  
California Institute of Technology

4800 Oak Grove Drive  
Pasadena, California 91109-8099

(818) 354-4321

(EXHIBIT 1 - Attached to Form JPL 0968)

## PROPERTY CLOSEOUT CERTIFICATE

The undersigned Contractor, having completed the work called for by Contract No. \_\_\_\_\_, dated \_\_\_\_\_, with the California Institute of Technology, Jet Propulsion Laboratory, certifies that:

(Check one, as appropriate)

- ☐ All Government property (as defined in FAR 45.101) has been disposed of by the Contractor and its subcontractors in accordance with the terms of the Contract.
- ☐ No Government property was furnished to or acquired by the Contractor or its subcontractors.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Title



## VESTING OF PROPERTY PURCHASED WITH CONTRACT FUNDS

TO: \_\_\_\_\_ (JPL Contract Technical Manager [CTM]) DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_ (Negotiator) EXT.: \_\_\_\_\_  
REFERENCE: Contract No. \_\_\_\_\_ with \_\_\_\_\_

Please complete this form regarding property to be purchased by the Contractor under the referenced Contract. (Attach additional sheets if necessary.) Title to items to be purchased by the Contractor listed below (or on identified attachments) and costing \$5,000 or less will vest in the Contractor. Items costing more than \$5,000 will vest in the Government unless otherwise stated under paragraph 2., below.

1. **Concurrence by CTM for Items to Vest In Contractor:** I have no objection for title to the following items to vest in the Contractor. (For items costing more than \$5,000, rationale must be provided by the CTM for the items to vest in the Contractor and NASA Property Officer approval must be obtained.)

a. **Items estimated to cost \$5,000 or less:**

Property Description

_____
_____
_____
_____

b. **Items estimated to cost more than \$5,000:**

Property Description

Rationale

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NMO Approval for paragraph 1.b. items to vest in the Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

2. **Items to be Acquired as Government Property:** Title to the following items to be purchased by the Contractor should vest with the Gov

a. **Items estimated to cost \$5,000 or less:**

Property Description


b. **Items estimated to cost more than \$5,000:**

Property Description


CTM Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

## **PROCUREMENT REVIEW GUIDELINES FOR SUBCONTRACTS ISSUED UNDER JPL COST-REIMBURSEMENT CONTRACTS**

- A. The General Provision for cost-reimbursement contracts entitled "Subcontracts" provides that certain subcontracts, including purchase orders, between JPL contractors and second-tier subcontractors require JPL review and consent. To obtain this consent, JPL contractors should submit the following documents and a DD form 1419, "DOD Industrial Plant Equipment Requisition," if applicable, for JPL review:
1. The proposed subcontract, including referenced documents (e.g., specifications, lists, drawings). JPL will review the statement of work, delivery or performance schedule, technical specifications and testing and reporting requirements for accuracy and compatibility with the contract.
  2. If competition was obtained, a list of the sources solicited, the results of bid/quotation/proposal evaluations, and the basis for source selection.
  3. If the solicitation was noncompetitive, the supporting rationale and documentation to justify the noncompetitive decision. The documentation should clearly and concisely identify the principal factors supporting the justification for the noncompetitive procurement, including why it was not possible to obtain competition or why competition was not a reasonable course of action, all factors considered.
  4. A cost or price analysis showing the subcontract cost/price is reasonable.
  5. A completed "Correlation of JPL Passdown Requirements to Contractor's Proposed Subcontract Provisions," form JPL 1942, correlating the passdown requirements of the JPL contract to the provisions in the subcontract.
- B. Certain provisions included in the JPL Contract must be passed down in second-tier subcontracts according to their terms.

***NOTE:** JPL does not represent that these are the only provisions that need to be flowed down to lower-tier subcontractors. These are merely JPL's minimum flowdown requirements. The contractor must make an independent assessment to ensure that the JPL contract is being fully performed. For example, JPL does not require the contractor to flow down the "Termination," "Changes," "Stop Work," or "Payment for Overtime Premiums" provisions; yet the contractor may consider these provisions (modified as appropriate) to be necessary.*

**CORRELATION OF JPL PASSDOWN REQUIREMENTS TO CONTRACTOR'S  
PROPOSED SUBCONTRACT PROVISIONS**

NOTE TO THE CONTRACTOR: Please complete and submit this form with the request for consent package. Please indicate the applicable JPL Provisions in your JPL Contract by marking an "X" in the box in the left column, below. Please supply the requested information identifying the subcontract provision which satisfies the passdown requirement for each applicable JPL contract provision. (See enclosed form JPL 1939, "Procurement Review Guidelines for Subcontracts Issued under JPL Cost-Reimbursement Contracts")

<u>JPL PROVISIONS</u>		<u>SUBCONTRACT PROVISIONS</u>		
GENERAL PROVISIONS		<u>No.</u>	<u>Title</u>	<u>Page</u>
<input type="checkbox"/>	GP-10. Notice to JPL of Labor Disputes			
<input type="checkbox"/>	GP-11. Asbestos Notification			
<input type="checkbox"/>	GP-16. Anti-Kickback Procedures			
<input type="checkbox"/>	GP-17. Limitation of Payments to Influence Certain Federal Transactions			
<input type="checkbox"/>	GP-18. Contractor and Subcontractor Cost or Pricing Data			
<input type="checkbox"/>	GP-19. Integrity of Unit Prices			
<input type="checkbox"/>	GP-20. Audit-Negotiation			
<input type="checkbox"/>	GP-22. Prohibition of Contractor Use of Privately Owned Aircraft in Contract Performance			
<input type="checkbox"/>	GP-23. Electrical Equipment Acquisition			
<input type="checkbox"/>	GP-24. Hazardous Material Identification and Material Safety Data			
<input type="checkbox"/>	GP-25. Notice of Radioactive Materials			
<input type="checkbox"/>	GP-26. Clean Air and Water			
<input type="checkbox"/>	GP-27. Limitation of Liability			
<input type="checkbox"/>	GP-28. Cross-Waivers of Liability for Space Shuttle Services, NASA Expendable Launch Vehicle (ELV) Launches, and for Space Station Activities			
<input type="checkbox"/>	GP-29. Contract Work Hours and Safety Standards Act - Overtime Compensation			

## JPL PROVISIONS

## SUBCONTRACT PROVISIONS

## GENERAL PROVISIONS (Cont'd)

<u>No.</u>	<u>Title</u>
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- ☐ GP-31. Equal Opportunity
- ☐ GP-32. Affirmative Action for Handicapped Workers
- ☐ GP-33. Affirmative Action for Special Disabled and Vietnam Era Veterans
- ☐ GP-34. Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
- ☐ GP-36. Preference for U.S.-Flag Air Carriers
- ☐ GP-37. Preference for Privately Owned U.S.-Flag Commercial Vessels
- ☐ GP-38. Required Sources for Jewel Bearings and Related Items
- ☐ GP-39. Restrictions on Certain Foreign Purchases
- ☐ GP-40. Geographic Participation in the Aerospace Program
- ☐ GP-44. Use of Rural Area Small Businesses
- ☐ GP-45. Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
- ☐ GP-47. Small Business and Small Disadvantaged Business (SB/SDB) Subcontracting Plan
- ☐ GP-48. Restrictions on Subcontractor Sales
- ☐ GP-54. Transfer of Technical Data Under Space Station International Agreements
- ☐ GP-55. Notice and Assistance Regarding Patent and Copyright Infringement
- ☐ GP-56. Authorization and Consent
- ☐ GP-63. Subcontracts
- ☐ GP-64. Government Property
- ☐ GP-67. Compliance with the Americans with Disabilities Act
- ☐ GP-77. Felony Conviction Information (Contractor's Personnel in Residence at JPL)

[illegible]

## SUBCONTRACT PROVISIONS

## **ADDITIONAL GENERAL PROVISIONS**

<u>No.</u>	<u>Title</u>
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Page

- ☐ AGP-2. Administration of Cost Accounting Standards
- ☐ AGP-3. Cost Accounting Standards
- ☐ AGP-4. Disclosure and Consistency of Cost Accounting Practices
- ☐ AGP-14. Liability for the Facilities
- ☐ AGP-23. Taxes (Foreign Cost-Reimbursement Contract)
- ☐ AGP-27. Rights in Data - Special Works
- ☐ AGP-30. New Technology
- ☐ AGP-31. Patent Rights - Retention by the Contractor (Short Form)
- ☐ AGP-32. Patent Rights (Long Form) (DOE)
- ☐ AGP-33. Patent Rights - Small Business Firms or Nonprofit Organizations (DOE)
- ☐ AGP-34. Invention Reporting and Rights - Foreign
- ☐ AGP-35. Filing of Patent Applications - Classified Subject Matter
- ☐ AGP-36. Security Requirements
- ☐ AGP-37. Security Requirements (CREI)
- ☐ AGP-43. Service Contract Act of 1965, As Amended
- ☐ AGP-44. Service Contract Act of 1965, As Amended (Long Form)
- ☐ AGP-47. Safety and Health
- ☐ AGP-48. Potentially Hazardous Items
- ☐ AGP-50. Frequency Authorization
- ☐ AGP-52. Duty-Free Entry
- ☐ AGP-54. Limitation of Liability - Services
- ☐ AGP-55. Limitation of Liability - High-Value Items
- ☐ AGP-57. Compliance with the Americans with Disabilities Act (Cost/CREI)

**JPL CERTIFICATION**

- ☐ Certification of Nonsegregated Facilities
- ☐ Certification of Clean Air and Water
- ☐ Certification of Anti-Kickback Compliance
- ☐ Certification of Americans with Disabilities Act Compliance
- ☐ Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
- ☐ Certification of Full Disclosure Regarding Debarred, Suspended, or Proposed for Debarment Status

**SUBCONTRACT CERTIFICATION**

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Following are examples of JPL Provisions which may require a subcontract provision for the contractor to comply with these provisions:

**JPL PROVISIONS****SUBCONTRACT PROVISION (if needed)****GENERAL PROVISIONS**

<u>No.</u>	<u>Title</u>	<u>Page</u>
<input type="checkbox"/>	GP-35. Buy American Act - Supplies	<hr/>
<input type="checkbox"/>	GP-51. Rights in Data - General	<hr/>
<input type="checkbox"/>	GP-52. Existing Commercial Computer Software - Licensing	<hr/>
<input type="checkbox"/>	GP-57. New Material	<hr/>
<input type="checkbox"/>	GP-68. Additional Data Requirements	<hr/>